

ADDENDUM

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CIVIL PART
ATLANTIC COUNTY
DOCKET NO.: ATL-L-2648-15
A.D. # _____

IN RE: JOHNSON AND JOHNSON) TRANSCRIPT
TALCUM-BASED POWDER) OF
PRODUCTS LITIGATION) MOTION
)

Place: Atlantic County Civil Crt.
1201 Bacharach Blvd.
Atlantic City, NJ 08401

Date: January 17, 2024

BEFORE:

HONORABLE JOHN C. PORTO, J.S.C.

TRANSCRIPT ORDERED BY:

SEAN C. GARRETT, ESQ., (Faegre Drinker Biddle &
Reath, L.L.P.)

APPEARANCES:

JEFFREY M. POLLOCK, ESQ., (Fox Rothschild, L.L.P.)
Attorney for Plaintiff

TED MEADOWS, ESQ., AND
ANDY BIRCHFIELD, ESQ., (Beasley Allen)
Attorneys for Plaintiff

*(Appearances continued)

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1 Against these facts, there is no question
2 that disqualification is required if there is going to
3 be any fairness to these proceedings for J and J going
4 forward and for that reason, we would ask the Court to
5 disqualify Beasley Allen. We noted in our reply brief,
6 this will not leave those plaintiffs without
7 representation.

8 In all of the cases where Beasley Allen is
9 listed as counsel on the Court's docket for plaintiffs,
10 they are represented by three other law firms,
11 including the Segal Weiss Firm. It is not a situation
12 where all of the sudden, you're going to have a large
13 number of plaintiffs who are not represented in this
14 M.C.L., that will not be the case. What will be the
15 case is fairness and integrity with preservation, using
16 the words of the Baldonado (phonetic) Court,
17 preservation of a fair and just litigation process will
18 be maintained. Thank you, Your Honor.

19 THE COURT: Thank you, Mr. Brody. Mr.
20 Pollock?

21 MR. POLLOCK: Yes, Your Honor. Thank you for
22 making time to hear us today.

23 THE COURT: You're welcome and you'll have as
24 much (indiscernible) time as Mr. Brody did. I will
25 have questions, though, afterwards.

1 MR. POLLOCK: I'm ready for your questions
2 whenever you are, Judge, but I wish I had the courtesy
3 of their Powerpoint beforehand so I could have reviewed
4 it but I think I'm pretty good, so I'm going to go
5 forward. What is stunning about the papers submitted
6 by J and J and by opposing counsel's argument today is,
7 he did not even mention the words, "Appearance of
8 impropriety," he didn't mention them.

9 And in 1984 when the Cordy decision was being
10 drafted by Magistrate Judge Kugler, which he
11 specifically says, there is no rule on-point. The
12 reason is 1.9 and 1.10 didn't exist yet. The Pala
13 (phonetic) condition had not, at that point, adopted
14 that rule. So the only rule was 1.7 and counsel is
15 entitled to his own argument, he is not entitled to his
16 own facts.

17 And in the Cordy decision and I'm going to
18 refer you to page 581, there is no question that Greene
19 performed services for Brown. He entered into a
20 contract, he paid, he learned their litigation
21 strategy, he reviewed their investigation, he rendered
22 some kind of oral opinion. So it's a lot more than
23 this scant Powerpoint presentation that he just
24 provided saying he spent 28 hours. He did a lot more.

25 Judge Kugler made those findings, he had an

1 investigation, he found those facts. There are no such
2 facts here. So what does counsel propose? Counsel
3 says, well, you can't rely upon some certifications
4 from counsel. The problem is, the Supreme Court of New
5 Jersey has said that's exactly what you're supposed to
6 do.

7 And they said unequivocally that, this is a
8 motion to disqualify and this is Trupos, as you
9 identified at 463 and O Builder's, Yuna, which is 206
10 N.J. at 117. Both come to the same conclusion. Yes,
11 because of the appearance of impropriety standard, we
12 don't want, unless absolutely necessary and you
13 articulated it up-front, Judge. We don't want a
14 factual inquiry into the record because the fact is, we
15 have to balance these things.

16 If you do go there, what you uncover, the
17 whole series of issues. But the Court had a choice in
18 1984 and they follow the American Law Institute's
19 guidance, they follow what Jeff Hazard had to say from
20 the University of Pennsylvania and they made the bold
21 choice to adopt the appearance of impropriety. That's
22 the standard and that's why the Kugler decision -- and
23 by the way, I don't know what Connecticut law is and I
24 don't know what California law is.

25 I honestly don't know. I do know New Jersey

1 law. And I don't know whether Connecticut has adopted
2 or rejected the appearance of impropriety, I don't know
3 how they got there. This is a New Jersey law issue.
4 This is a New Jersey law determination and the Supreme
5 Court of New Jersey is pretty clear; you are supposed
6 to do exactly what we've submitted.

7 J and J by the way, has an entire legion of
8 counsel, they have phalanxes of associates. There is
9 no reason, if they had the proofs, counsel makes the
10 argument repeatedly that Mr. Conlon knew all -- he was
11 running the entire J and J defense. He knew everything
12 about that case. There's not one iota of proof in this
13 record and they could have deduced it, there's not one
14 iota of proof that any of that is true.

15 We have no idea what Mr. Conlon did. We know
16 he spent 1,300, 1,600 hours, he know it cost something,
17 I have no idea but the fact is, this is their motion
18 and the Supreme Court of New Jersey has been very
19 clear. We decide the motion based upon the papers
20 presented. The arguments of counsel are just the
21 arguments of counsel. If they wanted to educe those
22 proofs, obviously they felt strongly about it, they
23 have the opportunity to put that proof on the record
24 right now and to establish it. They have failed.

25 On the counter balance, I've provided you two

1 certifications, one from Mr. Conlon, a lawyer who is no
2 longer practicing and from Mr. Birchfield, as well as
3 from Mr. Birchfield's partner. All three of them say
4 and he calls it a self-serving set of papers. I'm
5 sorry, I'm missing it because the Supreme Court of New
6 Jersey has said repeatedly that this is to be decided
7 on the papers.

8 So how else would I do it? I think when you
9 talk about self-serving papers; they had the
10 opportunity to prove it, they have failed. And they
11 warp Judge Kugler's decision in Cordy out of any
12 proportional reality in order to emphasize the point.
13 And by the way, if you look at Kevin Michael's book,
14 which I'm sure you may have and you look at the Cordy
15 decision, that case was decided before the appearance
16 of impropriety was adopted.

17 And if we adopt the rule that J and J wants
18 right now, we should just tell the Supreme Court of New
19 Jersey, you got it wrong. That, the appearance of
20 impropriety is still the standard -- is no longer the
21 -- we're going to apply the same standard to judges, to
22 you, as you apply to me. And frankly, that's just not
23 the rule, that's not the choice they made and it's not
24 up to J and J, with all due respect, to rewrite the
25 rules.

1 The Supreme Court has also said and this is
2 Yuna, 206 N.J. at 130, that disqualification is an
3 application to be granted sparingly and only in the
4 most extreme circumstances. And in this case, I do
5 think it's worthwhile noting that they made the exact
6 same application in the Federal District Court. And
7 the reason is, as the Supreme Court found and there are
8 several decisions directly on-point.

9 One is from Justice Patterson. This is, I
10 can't pronounce it, Dimitrakopoulos, 237 N.J. 91 at
11 108. The entire controversy doctrine embodies the
12 principle that the adjudication of legal controversies
13 should occur in one litigation and one court. You
14 don't get two bites at the apple.

15 That's not just the only time they've said
16 it, Joel versus Morrocco, 147 N.J. at 546. The entire
17 controversy doctrine seeks to further these objective
18 requiring that whenever possible, the adjudication of a
19 legal controversy should occur in one litigation and
20 only one court, citing Cogdale, which is part of the
21 three cases that lead up to the entire controversy
22 doctrine.

23 Why is that relevant here? You don't have to
24 rule based upon the entire controversy but you know we
25 have a judicial shortage in New Jersey, we have a

1 judicial shortage in the Federal Court. In that case
2 and the case with regard to Crispin versus Volkswagen,
3 the Supreme Court referred the lawyer to the Ethics
4 Committee for filing multiple actions based upon the
5 same thing. Now here, they did one thing different.
6 They actually said, by the way, we're filing. But
7 still, we've had to brief the matter twice but it also
8 does reflect on the credibility of J and J and having
9 pursued a hyper-aggressive tactic.

10 Counsel also made the point, well, Beasley
11 Allen Firm is going to make money out of this and
12 therefore, that obviously means they're biased. That
13 may be true that they have an interest in the case.
14 Obviously, they would not be pursuing it if they did
15 not. But the Third Circuit of the United States Court
16 of Appeals squarely and soundly and completely rejected
17 B.A.S.F.'s effort to try -- I'm sorry, wrong case, J
18 and J.'s effort, to try and wipe out his liabilities by
19 reforming the corporation and shoving things over into
20 one little entity and then bankrupting that entity, the
21 L.T.L.

22 J and J has shown in abundance that they will
23 strike out after anyone. I represented Doctor Moline
24 who they tried to knock out. They are not trying to
25 knock out the entire Beasley Allen Firm. And

1 obviously, if they do that here, it would have an
2 impact under imputed disqualification in the Federal
3 District Court, as well.

4 So why are they so (indiscernible) the
5 Beasley Allen Firm? I'm not inside of J and J, they
6 have no shared with me their information but since
7 counsel made his speculation, I'm going to make mine.
8 You know why, because Beasley Allen was successful.
9 They fought for their clients and the Third Circuit
10 agreed with them.

11 The Third Circuit Court of Appeals, which is
12 in the business, by and large, of approving bankruptcy
13 opinions. The rate of bankruptcy approvals is
14 phenomenally high but in this case, they happened to
15 get a judge who actually knew the bankruptcy code and
16 actually had been a bankruptcy judge in Delaware. And
17 the Third Circuit squarely and completely rejected
18 Judge Kaplan's effort and J and J's effort to use
19 L.T.L. to bankrupt the matter, to bankrupt the entity.

20 So when you look at it, my view is; does
21 Beasley Allen have an economic interest? Sure, so does
22 J and J. I can't decide that issue, I can't evaluate
23 who is more financially interested. What I can do is
24 address the ethics rules and that's what I would like
25 to do. The burden is a heavy burden, this is -- with

1 regard to doing it. The motion is, as you and I just
2 discussed, should be decided on the papers.

3 With regard to the whole review, Trupos I
4 think is pretty clear. The papers, the ones provided
5 to you today, unless you find extraordinary
6 circumstances, are to be the ones you decide and right
7 now, we have complied squarely with the ethics rules.
8 I also look at R.P.C. 1.9 and 1.10. These are the
9 rules that adopt the appearance of impropriety.

10 So I thought it might make sense -- I don't
11 have a fancy Powerpoint, I didn't realize that's what I
12 was supposed to do but I would like to go through 1.9
13 and 1.10 with you briefly. 1.6, confidential
14 information. There is zero evidence in this record
15 that Mr. Conlon shared anything with the Beasley Allen
16 Firm. There is no such beast.

17 And the fact is, to now find based upon
18 counsel's eloquent argument that it must have occurred
19 under the cover of darkness and when the two of them
20 are sweating it out, trying to figure out how to stick
21 it to J and J, that they must have shared that
22 information. That is a fancy way of saying, the
23 appearance of impropriety. That's not the rule, so
24 that argument fails. And by the way, I don't know why
25 Connecticut found the way it found and I don't really

1 care, I don't practice in Connecticut. So the fact is,
2 I do care deeply about New Jersey Law.

3 With regard to 1.9 and 1.10, these rules were
4 adopted by the Supreme Court of New Jersey after
5 careful deliberation. They went through not only the
6 commission but then they actually went through
7 extensive argument and there was debate and
8 disagreement and as you know, there have been multiple
9 opinions afterwards.

10 Duties to clients, 1.9, "A lawyer who is
11 representing a client shall not thereafter." Well, Mr.
12 Conlon is now a lawyer representing anyone in this
13 case. He has his own firm, Legacy but the fact is,
14 even J and J apparently doesn't believe that Mr. Conlon
15 has acted inappropriately because they haven't pursued
16 him here.

17 They haven't brought a claim against Mr.
18 Conlon here, they have done nothing to prove that Mr.
19 Conlon violated R.P.C. 1.9, represents a party,
20 breached any confidentiality. They have no problem
21 throwing rocks and stones at the Beasley Allen Firm but
22 I think that's really only because the Beasley Allen
23 Firm has done what it's supposed to do on behalf of its
24 client.

25 It's protected their interest, vigorously, at

1 the risk of tremendous debate before the Third Circuit.
2 Because obviously, there were people who wanted to take
3 the deal and run and there was the Beasley Allen Firm
4 and others who thought they should fight it through.
5 It's not up to me to decide whether that was the right
6 move or wrong move but I don't think there's an
7 evidence that the Beasley Allen Firm did anything other
8 than it pulled the highest standard of the law to do
9 what they thought was right on behalf of their clients.

10 It doesn't matter to me if J and J disagrees.
11 They are allowed to disagree but the Beasley Allen Firm
12 is allowed to go (indiscernible) and the Third Circuit,
13 obviously -- and by the way, J and J tried to go en
14 banc and it failed. So clearly, the Third Circuit did
15 look at the issue thoroughly.

16 Unlike the Cordy decision which was decided
17 prior to this, in rule R.P.C. 1.10, it has a two-part
18 test and that two-part test is important here, under
19 1.10(b-1). The matter has to be the same or
20 substantially related and any lawyer in the firm had
21 information protected. There's no proof here that Mr.
22 Conlon shared information that was protected.

23 Did Mr. Conlon arguably have that
24 information? Absolutely, there's no doubt. He worked
25 for J and J, I assume he's a quality guy, I've never

1 met him. He's at a decent firm, don't doubt that
2 either but it's not up to us, it's not our burden and
3 they bear, as the Supreme Court has said, a heavy
4 burden.

5 J and J has a heavy burden, in order to
6 fulfill what it wants to do, which is knock out the
7 Beasley Allen Firm. And they can't carry that burden,
8 not on this record and not with these proofs because
9 they have failed. Bear with me for one second, Your
10 Honor, I'm sorry.

11 THE COURT: Sure.

12 MR. POLLOCK: The -- counsel also mentioned
13 the idea of the side-switching lawyer. And obviously,
14 that gets into two rules, 4.7, 1.9, 1.10 and a couple
15 others, I guess. There's no indication here that Mr.
16 Conlon ever shared the information. What he has argued
17 vehemently, upside-down and backwards is, well, it must
18 have occurred, it smells wrong, it doesn't sound right
19 because Conlon was working with Birchfield to try to
20 work up this deal.

21 So let's be clear, there's nothing in the
22 record as to what Mr. Conlon and Mr. Birchfield's roles
23 are other than that they communicated. By the way, Mr.
24 Conlon also communicated with J and J. There's nothing
25 in the record that -- to support Counsel's argument

1 that Andy Birchfield and the Beasley Allen Firm intend
2 to buy out some interest here.

3 There's rather the indication that Mr. Conlon
4 had an idea on behalf of his firm, Legacy Solutions,
5 which is a firm that apparently works on resolving
6 disputes which I thought the Court wanted to promote
7 but there's no proof here that there was any
8 information shared that was inside baseball. Nothing
9 that J and J shared with Conlon that went to Mr.
10 Birchfield.

11 There hasn't been, in all the fancy
12 Powerpoint and the argument today, there's been no
13 showing that there was some super secret discussion.
14 Everything that my opposing counsel points out is, yes,
15 Mr. Birchfield did have discussions with different news
16 groups after they had a meeting, by the way, so did J
17 and J.

18 The reason being is, that the investors and
19 the stock guys are always looking at; where is the
20 world going? They are allowed to have those
21 discussions, I'm sure they will happen all the time.
22 In this kind of litigation, it simply occurs. There
23 was nothing there that shows that he had any inside
24 information that he was not allowed to reveal or that
25 he got from Mr. Conlon that was protected. So I don't

1 understand how the side-switching lawyer works.

2 I do think that when you look at -- although
3 credibility should not, I believe, should be decided
4 respectfully, Your Honor, on the papers before you, I
5 don't believe that when you look at the credibility of
6 the entities because opposing counsel made multiple
7 attacks on Mr. Birchfield, on the Beasley Allen Firm, I
8 do think it's very significant that the entire
9 controversy doctrine literally is being litigated twice
10 here.

11 They are going to get two bites at the apple.
12 That's -- so you're not going to have one court, you
13 have two. I do think that affects their credibility.
14 I do think that affects their credibility and all of
15 their efforts, they have failed to put up any proofs
16 whatsoever that the information Mr. Conlon was working
17 on -- and I have no idea what specifically he did. I
18 don't know what he did with those 1,300 or 1,600 hours.

19 There's been no showing on this record that,
20 that information was directly relevant to what Mr.
21 Birchfield is discussing today. And what the Supreme
22 Court has been very clear on is that Your Honor, you
23 have the opportunity and unfortunately the
24 responsibility, to engage in a detailed fact-finding
25 evaluation.

1 So let's go back to Judge Kugler and the
2 decision in Cordy. He actually made a specific fact-
3 finding on that record because at that point in time,
4 under R.P.C. 1.7, he was doing the best he could, it
5 was the only option he had. When the Supreme Court of
6 New Jersey made the choice which opposing counsel
7 refuses to recognize, that the appearance of
8 impropriety governs the standard today.

9 At that point, they came also out with a rule
10 that barring exceptional circumstances, the
11 determination whether counsel should be disqualified
12 which is an extraordinary remedy looking at Yuna, the
13 fact is, it needed to be decided on the papers before
14 you. Do you have the right to do more? Sure, you do.
15 But the fact is, right now, this is a high stakes
16 litigation. The reality is, counsel from both sides
17 are capable and confident. If they had the proofs,
18 they would have put them on the table already.

19 Looked at a different way, what would we do?
20 Will we start grilling Mr. Conlon and the inside
21 lawyers at J and J, what they discussed and what
22 strategies they had and what their strategies are today
23 and the same thing? To me, it would turn the entire
24 process into a farce and it would completely derail
25 either going forward or settling. I just don't see how

1 that inquiry, even if you were (indiscernible) I would
2 respectfully argue that it makes no sense, it doesn't
3 get you anywhere and by the way, it's also not the law.

4 If you'll bear with me one second, Your
5 Honor, I think I may be done. Unless -- of course, if
6 you have any questions for me. Your Honor, I think
7 I've addressed the core issues I have. If you have any
8 questions for me, Your Honor.

9 THE COURT: I do, Mr. Pollock and I'm going
10 to follow up and you may be seated.

11 MR. POLLOCK: Yes, sir.

12 THE COURT: You've been standing a long time.
13 The Trupos case we've been talking about is the City of
14 Atlantic City, back here, versus Trupos, 201 New Jersey
15 447, 2010 decision. Notably, in the True Post
16 decision, it was a law firm's representation of
17 plaintiffs in the defense of tax appeal. So factually
18 distinguishable but bearing some with regard to
19 disqualification of counsel.

20 And the Court in that case was looking at
21 R.P.C. 1.9(a). And what I wanted to start with is,
22 they give you the law and they say in practice, such a
23 motion should ordinarily be decided on the affidavits
24 and documentary evidence submitted and an evidentiary
25 hearing should be held only when the Court cannot with

1 through it paragraph-by-paragraph, there is a level of
2 detail there that establishes without a doubt that it
3 -- his work was germane to what is going on in this
4 M.C.L. right now and I don't think there is any dispute
5 as to that.

6 THE COURT: Thank you, Mr. Brody. Mr.
7 Pollock?

8 MR. POLLOCK: Thank you, Your Honor and I
9 appreciate your patience.

10 THE COURT: You're welcome.

11 MR. POLLOCK: Two points I would make. One
12 with regard to Trupos and I'm looking specifically at
13 201 N.J. at 463. A determination of whether counsel
14 should be disqualified is an issue of law, subject to
15 DeNovo plenary appeal. He also then -- I also will
16 cite to Yuna, which is 206 N.J. at 118.

17 After defendant sought and was granted leave
18 to appeal from that interlocutory (indiscernible)
19 order, the Appellate Division in an unpublished
20 decision procuring affirm the denial of defendant's
21 motion to disqualify, noting that motions for
22 disqualification should ordinarily be decided on
23 certifications and documentary evidence.

24 So and Judge, I'm not challenging you at all
25 in your authority. You have the right to do what you

1 see is fit and I'm sure you will but I do believe that
2 if we, on the facts you have today, what J and J says
3 is Mr. Birchfield spent -- Mr. Conlon, I'm sorry, spent
4 a lot of time on this matter, 1,300 hours, \$2 million
5 worth or whatever it was.

6 What specifically did he do on January 13th,
7 2021? I have no clue. What did he do on the following
8 day, I have no idea. What there is, this basically is
9 a; hey, he worked on the matter for J and J. Did it
10 involve the L.T.L. bankruptcy filings, what did it
11 involve? I have no clue and neither does anybody else
12 because in these documents which is what the Supreme
13 Court has said in both Yuna and Trupos, there is no
14 record here to support their decision.

15 Again, Judge Porto, this is your courtroom
16 and I respect that and if you want to have a plenary
17 hearing, you have the right to order it but I do
18 question; how would we proceed? At this point, am I
19 going to be grilling the J and J Head of Litigation or
20 somebody, walking through timesheet-after-timesheet? I
21 mean, I can't imagine the number of litigation
22 objections, there will be an attorney-client work
23 product and everything else.

24 And also, why is it relevant? Because at
25 this point, we keep on going back to Cordy, we keep on

1 going to these other cases, which is fine. Cordy was
2 decided without the appearance of impropriety. That
3 rule was a game changer. It was a significant decision
4 for the Supreme Court of New Jersey to make.

5 Prior to Cordy, I'll admit, we probably would
6 lose because the fact is, on that fact pattern, you
7 would look at it and you would say, you know what, it
8 smells right and that's really their argument. It must
9 be the case, it must be the case that something
10 transpired here. The problem is, in weighing the
11 balance and you know this, Judge, because you've
12 practiced for a long time.

13 You have a balance, the needs of the client
14 to be represented by the lawyer of its choosing. The
15 needs to protect client confidence of J and J, which I
16 respect, by the way. So you have this balancing going
17 on and it's very clear; unless there is a clear,
18 articulated violation of the rules of professional
19 conduct, then the answer is, the only finding on these
20 papers must be that the Beasley Allen Firm remains and
21 they can go forward and litigate as God intended.

22 The last thing I'll point out is that 1.9 and
23 1.10 were not lightly written, they were heavily
24 negotiated. And 1.9 says, "A lawyer who has
25 represented a client." That's not Beasley Allen, they

1 never represented J and J. Ask Mr. Conlon. So if they
2 have an issue, go after Mr. Conlon, which notably, they
3 have not done, which is kind of odd.

4 So then you go to 1.10 and as you pointed,
5 imputed disqualification. A lawyer is associated with
6 a firm if they have confidential information -- I agree
7 with your interpretation. We should not hire and will
8 not hire Mr. Conlon. He is not going to be an employee
9 of Beasley Allen.

10 The fact is but the rules were written for
11 specifically that purpose and they were knowingly. It
12 doesn't say that you can't -- you know, when you talk
13 about the whole idea of who you can interview in the
14 control group test, let's get outside of where we are
15 right now. Who can I talk to? Well, I can talk to
16 anyone who is not within the control group under R.P.C.
17 1.4 and 1.6.

18 Mr. Conlon, is he in that control group? I
19 haven't seen anything saying he is. I haven't seen any
20 effort by J and J to define him as a person that I
21 cannot talk to. Classic example is, I'm suing Goodyear
22 Tire and I want to go talk to a mechanic. How good are
23 those Goodyear tires? Unless Goodyear puts that guy
24 within the control group, which they had the ability to
25 do but to this day, they have not done it.

1 So on those facts, all of that just speaks
2 volumes that this is a make-work argument. And
3 therefore, with all due respect Judge, I would urge the
4 Court to rule on the papers that are before it, not the
5 papers that could have been before it and since they
6 failed to carry their heavy burden and it's being
7 written for strategic purposes, they don't like the
8 Beasley Allen Firm.

9 They are allowed to dislike the Beasley Allen
10 Firm but the fact is, that's not a basis for
11 disqualifying it. Unless you have any further
12 questions, Your Honor, I'll rest.

13 THE COURT: I don't know, so Mr. Pollock, I
14 shouldn't keep the record open?

15 MR. POLLOCK: Your Honor, it's your courtroom
16 and I respect any decision you make. If you want the
17 record open, you can but the fact is, I do believe what
18 the Supreme Court urges is that, unless there is a
19 nagging question and I'm sure there's a million
20 different issues. What did Conlon do in 2019, how did
21 he do in law school, what role did he play in -- I have
22 no idea and I don't really care.

23 What I do care about is one narrow window.
24 The window where Conlon had an idea of trying to
25 resolve this dispute. Mr. Birchfield, according to the

1 e-mail, had to communicate with him and so did J and J.
2 That's the one narrow window I'm looking at because I
3 don't care what he did before.

4 Unless there is some real evidence that he
5 shared that information inappropriately that he had
6 with Andy Birchfield and the Beasley Allen Firm and
7 there's no proof that he did.

8 THE COURT: Thank you, Mr. Pollock.

9 MR. POLLOCK: Thank you, Your Honor.

10 THE COURT: Mr. Brody?

11 MR. BRODY: If I may and I'll be brief, Your
12 Honor --

13 THE COURT: We don't have a stopwatch,
14 Counsel.

15 MR. BRODY: So first of all, I'm surprised to
16 hear reference to questions about a control group.
17 Clearly, the Hass declaration makes clear that Mr.
18 Conlon was meeting with people at the highest levels of
19 the Law Department. And if there is to be -- if this
20 case were decided based on a control group test, that
21 is clearly met.

22 Again, what we're hearing, as the core
23 argument and this is actually what we started with
24 earlier this afternoon, is Beasley Allen's insistence,
25 Mr. Pollock's insistence that; well, because Beasley

of the day.

(Proceeding concluded at 3:28:04 p.m.)

* * * * *

CERTIFICATION

I, Nitsa Carrozza, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, timestamp from 01:59:33 p.m. to 03:28:04 p.m., is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings, as recorded.

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01/19/2024

Date

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CIVIL PART
ATLANTIC COUNTY
DOCKET NO.: ATL-L-2648-15
A.D. # _____

IN RE: JOHNSON AND JOHNSON) TRANSCRIPT
TALCUM-BASED POWDER) OF
PRODUCTS LITIGATION) CONFERENCE
)

Place: Atlantic County Courthouse
(Heard Via Zoom)

Date: January 23, 2024

BEFORE:

HONORABLE JOHN PORTO, J.S.C.

TRANSCRIPT ORDERED BY:

JEFFREY M. POLLOCK, ESQ.,
(Fox Rothschild)

APPEARANCES:

JEFFREY M. POLLOCK, ESQ.,
(Fox Rothschild)
Attorney for Birchfield

STEVEN BRODY, ESQ.,
Attorney for Johnson & Johnson, LTL

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Recording Opr: Catherine Mauro

1 We had oral argument. I got a copy of the
2 transcript. I've reviewed all of the case law. I'm
3 focusing, candidly on New Jersey State case law as well
4 as district court. I'm not looking at any out-of-state
5 cases. So, just want to let you know where I'm
6 focusing in on.

7 During oral argument and this is relating to
8 the disqualification, and I'm trying to do this as the
9 Trupos case said on the papers. And Yuna also said and
10 adopted that same process. The O Builders & Associates
11 versus Yuna Corporation of New Jersey 206 N.J. 109.

12 And I'm going to be focusing on page 129 of that
13 decision. When I reviewed this transcript, counsel for
14 Beasley Allen, Mr. Pollock raised the point and I made
15 note of it, and also commented again in the review of
16 the transcript.

17 Notably, did Mr. Conlin (phonetic) have
18 discussions that are really germane to the work he did
19 with Birchfield, Mr. Birchfield. And he intimated that
20 perhaps Conlin's role with J&J was limited to simply
21 the filing of the bankruptcy involving the LTL.

22 So what specifically, what I'm looking for
23 then Mr. Brody and again I'm trying to keep it as best
24 I can contained on the papers is, so what I'm looking
25 for is what specifically was Conlin working on, again a

1 shorthand reference I mean no disrespect or
2 familiarity, what was Conlin working on during those
3 1,600 hours with Faeger Drinker and is it substantially
4 similarly germane to any work with Birchfield?

5 Can you provide a certification in that
6 regard, Mr. Brody?

7 MR. BRODY: Absolutely, Your Honor. We --
8 Mr. Haas certainly provide that certification based on
9 his personal involvement with the work that Mr. Conlin
10 did. And in particular can certify that Mr. Conlin
11 were involved in the evaluation of all of potential
12 resolution strategies for the Talc Litigation at the
13 highest level for the company.

14 So, the exact matter that is before Your
15 Honor was subject of the work that Mr. Conlin was
16 doing as part of the senior J&J team. Now obviously,
17 when you're talking about potential resolutions, you're
18 looking at all options including bankruptcy, including
19 as Your Honor knows a potential resolution through the
20 Imerys bankruptcy, as well as resolution through the
21 Tort System.

22 So, it is an all encompassing evaluation of
23 potential resolutions that included evaluation and
24 discussion of the -- and I do have to say high level,
25 strengths and weaknesses of the underlying cases, and

1 how that would intercept and impact the company's
2 strategies for the ultimately resolution, what it had
3 hoped would be the ultimate resolution of the
4 litigation.

5 THE COURT: Now, it's no secret that J&J
6 desires to pursue the resolution through bankruptcy.
7 So one of the points that Mr. Conlin raised in his
8 certification, and I'm going by memory right now, is
9 that there's nothing that he derived from J&J that has
10 any basis on what Legacy is doing.

11 So we don't have any documentation, it's not
12 like Trupos or Yuna to the extent that there is no
13 documentation that I can look at. We're looking at
14 inferential. So what I'm trying to do Mr. Brody and
15 Mr. Pollock is this is a distinguishable case from all
16 the other cases I feel from what counsel cited and that
17 came up in the Court's research that involve a former
18 attorney, involving a former client, involving a former
19 attorney that is no longer practicing law who is
20 deriving -- who co-founds a company, the Legacy
21 Company, and is now trying to formulate a settlement
22 that doesn't involve the bankruptcy. It involves the
23 capital markets, I think Mr. Conlin says.

24 So that's what I'm trying to do. Mr.
25 Pollock, anything to add?

1 MR. POLLOCK: No, Your Honor. The only
2 points that I would raise, and I think I follow
3 analytically where you're going, that there's one issue
4 I also did raise during oral argument, is that timing
5 may matter, because Mr. Conlin was working at a
6 specific window in time, and the fact is we're now at a
7 different window in time. I think that's another way
8 of, if you will, of addressing the issue you're hitting
9 which is how overlapping are these?

10 There's one other issue which I wish I
11 responded to, and I'm not trying to reargue the motion,
12 but I did miss this one last time and it may be
13 relevant. Mr. Brody argued at length that Mr. Conlin
14 -- Mr. Birchfield reached out to Mr. Conlin, that they
15 were arm-in-arm and they were working together. There
16 is zero proof that that is true. I think Your Honor
17 stated it better, Legacy had an idea or thing to sell,
18 which is a resolution. I believe that the truth is
19 that Legacy reached out to both, Conlin and to
20 Birchfield, and to J&J.

21 My point being that the inference was led and
22 I missed this one in oral argument and I should've
23 addressed it, and I think I want to address if there's
24 a responsive paper from J&J, that there is nothing in
25 the record that Birchfield reached out to Conlin and

1 MR. BRODY: Of course. Thank you.

2 THE COURT: Again, Mr. Brody, Mr. Pollock,
3 thank you for being available. I appreciate it.
4 Thanks so much. Have a good rest of the day, everyone.
5 Thank you.

6 (Conference concluded at 3:57 p.m.)

7 * * * *

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12 CERTIFICATION

13 I, Sharon Conover, the assigned transcriber, do
14 hereby certify the foregoing transcript of proceedings
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<p>1 UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF NEW JERSEY</p> <p>3</p> <p>4 IN RE: JOHNSON & JOHNSON CIVIL DOCKET NUMBER: TALCUM POWDER PRODUCTS 3:16-md-02738-MAS-RLS 5 MARKETING, SALES PRACTICES 6 AND PRODUCTS LIABILITY CASE MANAGEMENT CONFERENCE LITIGATION AND MOTION HEARING</p> <p>7</p> <p>8 Clarkson S. Fisher Building & U.S. Courthouse 402 East State Street 9 Trenton, New Jersey 08608 February 07, 2024 Commencing at 1:00 p.m.</p> <p>10 <u>BEFORE:</u> THE HONORABLE RUKHSANAH L. SINGH, 11 UNITED STATES MAGISTRATE JUDGE</p> <p>12 <u>APPEARANCES:</u></p> <p>13 FOR THE PLAINTIFFS:</p> <p>14 ASHCRAFT & GEREL, LLP 15 BY: MICHELLE A. PARFITT, ESQUIRE JAMES S. GREEN, ESQUIRE 1825 K STREET, N.W. 16 SUITE 700 WASHINGTON, DC 20006</p> <p>17</p> <p>18 BEASLEY ALLEN LAW FIRM 19 BY: P. LEIGH O'DELL, ESQUIRE ANDY BIRCHFIELD, ESQUIRE 218 COMMERCE STREET 20 P.O. BOX 4160 MONTGOMERY, AL 36104</p> <p>21</p> <p>22</p> <p>23 Carol Farrell, Official Court Reporter cfarrell.crr@gmail.com 24 856-318-6100 25 Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.</p> <p>United States District Court District of New Jersey</p>	<p>3</p> <p>4 FOR THE DEFENDANTS:</p> <p>5</p> <p>6 FAEGRE DRINKER BIDDLE & REATH LLP 7 BY: SUSAN M. SHARKO, ESQUIRE SEAN C. GARRETT, ESQUIRE 8 600 CAMPUS FLORHAM PARK, NJ 07932</p> <p>9</p> <p>10 O'MELVENY & MYERS LLP 11 BY: STEVE BRODY, ESQUIRE JASON ZARROW, ESQUIRE 1625 EYE STREET, NW 12 WASHINGTON, DC 20006</p> <p>13</p> <p>14 SHOOK, HARDY & BACON L.L.P. 15 BY: KATHLEEN FRAZIER, ESQUIRE 600 TRAVIS, SUITE 3400 HOUSTON, TX 77002</p> <p>16</p> <p>17 HARDIN, KUNDLA, MCKEON & POLETTTO 18 BY: JANET L. POLETTTO, ESQUIRE 673 MORRIS AVENUE #100 19 SPRINGFIELD, NJ 07081</p> <p>20</p> <p>21 REILLY, MCDEVITT & HENRICH, P.C. 22 BY: SUZANNE I. TURPIN, ESQUIRE 3 EXECUTIVE CAMPUS, SUITE 310 CHERRY HILL, NJ 08002</p> <p>23</p> <p>24 ANDREW C. WHITE, ESQUIRE 25 ASSISTANT GENERAL COUNSEL ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933</p> <p>United States District Court District of New Jersey</p>																																																																																																																																																																																																																																																																																																																																																																																						
<p>1 <u>APPEARANCES (Continued):</u></p> <p>2</p> <p>3 FOR THE PLAINTIFFS (Continued):</p> <p>4 FOX ROTHSCHILD LLP 5 BY: JEFFREY M. POLLOCK, ESQUIRE 997 LENOX DRIVE, BUILDING 3 LAWRENCEVILLE, NJ 08648-2311</p> <p>6</p> <p>7 BEASLEY ALLEN LAW FIRM 8 BY: P. LEIGH O'DELL, ESQUIRE ANDY BIRCHFIELD, ESQUIRE 218 COMMERCE STREET 9 P.O. BOX 4160 MONTGOMERY, AL 36104</p> <p>10</p> <p>11 MOTLEY RICE LLC 12 BY: DANIEL R. LAPINSKI, ESQUIRE 210 LAKE DRIVE EAST, SUITE 101 CHERRY HILL, NJ 08002</p> <p>13</p> <p>14 LEVIN, SEDRAN & BERMAN LLP 15 BY: LAURENCE S. BERMAN, ESQUIRE 510 WALNUT STREET, SUITE 500 PHILADELPHIA, PA 19106-3697</p> <p>16</p> <p>17 COHEN, PLACITELLA & ROTH, PC 18 BY: CHRISTOPHER M. PLACITELLA, ESQUIRE 127 MAPLE AVENUE RED BANK, NJ 07701</p> <p>19</p> <p>20 GOLOMB LEGAL, P.C. 21 BY: RICHARD GOLOMB, ESQUIRE 1835 MARKET STREET, SUITE 2900 PHILADELPHIA, PA 19103</p> <p>22</p> <p>23 MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC 24 BY: VICKI J. MANIATIS, ESQUIRE 1 BRIDGE PLAZA NORTH, SUITE 275 FORT LEE, NJ 07024</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> <p>96</p> <p>97</p> <p>98</p> <p>99</p> <p>100</p> <p>United States District Court District of New Jersey</p>	<p>4</p> <p>1 <u>I N D E X</u></p> <p>2</p> <table><thead><tr><th data-bbox="812 1155 1331 1176"><u>CASE MANAGEMENT CONFERENCE</u></th><th data-bbox="1331 1155 1568 1176"><u>PAGE</u></th></tr></thead><tbody><tr><td data-bbox="812 1197 1331 1218">3 BY: MS. 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1 provide in camera? Go for it. They have provided nada,
2 nothing. And that being the case, they have failed on their
3 burden.

4 So I agree that right now, today, it is their burden
5 to prove that something was actually transpired.

6 The "it stinks" argument is absolutely the revocation
7 of the appearance of impropriety, and while you have lots of
8 powers as a Magistrate Judge, the Supreme Court of New Jersey
9 is the one that gets to decide that rule. So I think -- and
10 they already said, no, we're not -- someone could convince
11 them, I suppose, that they could re-invoke it, but I don't
12 think they're going to. And that being the case, until that
13 happens, I think the law is pretty simple and clear.

14 So I will go quickly at this point, Your Honor.
15 Again, if you want to stop me at any point in time, you have
16 questions --

17 THE COURT: Go right ahead. Thank you.

18 MR. POLLOCK: -- I'm here to answer your questions.

19 One, they have not alleged a single RPC violation.
20 That speaks volumes. You need an RPC violation because,
21 otherwise, you're back to the appearance of impropriety.

22 There is no evidence that there was significant harm.
23 And, again, I'm going to *O Builders*, where it has to be
24 something not just nominal, not just, hey, I think there was --
25 you know, I might know -- I don't -- I don't doubt Mr. Conlan

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1 knew stuff. He worked hard, Faegre Benson, top-quality firm --
2 I'm sure he knew lots of things.

3 Is it still relevant today? Is it still relevant
4 after LTL? And obviously, we haven't gotten to the fact that
5 he says, I haven't shared it with Beasley Allen, Birchfield.
6 And Birchfield, Beasley Allen, was saying, through both Ted
7 Wells, through Mr. Birchfield, they all say, I didn't get it.

8 So there is no evidence whatsoever. If they had
9 proof, the mere fact that, hey, I think if I put together this
10 line of cookies, somehow it might turn into something, you've
11 got to show me the goods, and I don't see how that happens.

12 I do believe, with all due respect to Judge Porto, by
13 the way -- and, look, I think he's trying to do the right
14 thing. I do believe, at the initial hearing, I think Judge
15 Porto was misled, just as I believe Mr. Brody has misled you,
16 because what he said was the two of them are aligned; that
17 Conlan and Birchfield had this nefarious plot to undercut J&J's
18 privacy and work against J&J.

19 Well, obviously, Birchfield, Beasley Allen, are
20 opposed to J&J; otherwise, we wouldn't be here.

21 Conlan is absolutely on his own little island, trying
22 to sell for Conlan.

23 There is no proof that the two -- other than one
24 meeting, and this is when Conlan has been working for several
25 months, trying to get J&J to buy into this approach -- hey, I

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1 think I have an idea; are you guys interested? Finally,
2 Mr. Haas says, nope, I'm not interested, no more.

3 So what does Conlan do? He turns around and talks to
4 the Talc Creditors Committee. He did not reach out to Mr. --
5 Mr. Birchfield. There is no proof that he did.

6 Eventually, the two of them had discussions,
7 absolutely, because Beasley Allen, just as Mr. Haas had
8 recommended, was saying, hey, if there is a way to work this
9 out, we should talk. This is somebody who might have a
10 solution. But there is zero facts, zero evidence, that they
11 ever worked with any confidential J&J information.

12 Mr. Conlan was never retained, never a lawyer at,
13 never worked for, never hired as an expert. I'm not doubting
14 he's qualified, but he was not any -- at any point in time
15 retained as someone to advise Beasley Allen.

16 They have a heavy burden, as you know, and they have
17 to show an actual conflict. I think -- I don't think they can
18 show any of those things.

19 The Supreme Court has rejected this -- in the In Re:
20 Advisory Opinion 188 N.J. at 552, the history, to me -- this is
21 reviving history all over again. What we are doing is we are
22 going back to the days that Gibbons Deldeo and other firms --
23 it wasn't just Gibbons -- that were challenging the question
24 of, hey, I'm getting knocked out of this case. And it happened
25 to Wilentz too, and a few others. And I have no idea what the

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1 merits of those cases were about. I didn't dig that far into
2 the history. What I do know is that that was a significant
3 debate and discussion.

4 I do actually believe, candidly and fully, that the
5 entire purpose of this somewhat lengthy LTL bankruptcy exercise
6 was really one of delay, and it causes significant prejudice to
7 the 12,000 people that have entrusted their welfare to the
8 Beasley Allen Law Firm.

9 Beasley Allen has been working on these matters since
10 2013. They have served in every possible role, as you know, on
11 the Claimants Committee and other things here, and there has
12 never been a smudge of a problem with them. They are trying to
13 work out -- J&J's representing its view; Beasley Allen and the
14 plaintiffs are working out their view.

15 So to me, when you look at that, I think the burden of
16 all persuasion on the elements -- and this is Yuna, 206 at
17 127 -- is on the -- on J&J to prove there is a problem. They
18 have failed.

19 Arguments of counsel are not evidence. The documents
20 are evidence.

21 1.9 requires Mr. Conlan be representing them, and the
22 words are pretty simple because when the Pollock Commission --
23 these are the rules -- 1.9 and 1.10 are two of the rules that
24 is part of Ethics 2000, which was the ABA rule, that's what
25 they adopted.

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1 And, Your Honor, you know this already, I'm sorry,
2 just moving along. I don't want to waste your time.
3 THE COURT: No. Go ahead.
4 MR. POLLOCK: But 1.9 is critical. And I looked at it
5 again today, 1.9(a): A lawyer who's representing a client in a
6 matter shall not thereafter represent.

7 Mr. Conlan is not representing anyone. He is
8 representing his own company. He's not representing the
9 plaintiffs.

10 RPC 1.10, Imputation of Conflicts. And that's what I
11 thought they were going to go for, apparently not.

12 1.10(b): When a lawyer is terminated in association
13 with a law firm -- so he leaves Faegre Benson -- the lawyer is
14 not prohibited from thereafter representing. You gotta show
15 he's representing someone. And the problem is, he has no
16 client. He gave no advice, and there is no proof that he did.

17 Lastly, I'll just briefly go through a few pieces of
18 evidence and then I'll -- then I'll rest, Your Honor, unless
19 you, of course, have any questions.

20 I looked at the correspondence that J&J relied upon,
21 too.

22 So in -- October 18, 2023, and this is document 43 of
23 221, Legacy has the support of lead counsel for the OC
24 claimants, including Andy Birchfield, for an MDL opt-in
25 settlement matrix, with Legacy that required and is

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1 approximately -- expected to garner 95 percent opt-in of
2 current OC claimants. Andy Birchfield, Doug Dachille, and I
3 are prepared to meet with you. There is nothing in here that
4 says, hey, by the way -- and Mr. Brody goes far on this one --
5 we were working together, they were in league, they prepared
6 this together.

7 I submit to Your Honor, it's one communication where
8 Conlan is trying to make the sale on behalf of his company, and
9 there is zero proof that the two guys were -- that Birchfield,
10 Beasley Allen, were working together in any way, other than the
11 same way that J&J had been working with Conlan for six months.
12 So to me, if that's true, then why are they not pointing that
13 out? I think that's significant.

14 To make it clear, let's look at 44 of 221. This is,
15 again, document 28976. And this is a document dated September
16 28, 2023. This is Doug Dachille and Mr. Conlan writing to the
17 folks at J&J: As Jim explained: Our solution -- that's not --
18 that's not Beasley Allen. "Our solution," that's Legacy. Our
19 solution will relieve J&J of both its current and future talc
20 liabilities.

21 To achieve that outcome -- it makes it crystal
22 clear -- Legacy will require -- acquire the LTL plus all other
23 entities. Not Beasley Allen, not Birchfield, not the
24 plaintiffs. Legacy. He's arguing on behalf of Legacy
25 Solutions. That's the only one, and logically, too. It's his

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1 company, by the way.

2 I want to go briefly to the Conlan document because
3 Mr. Conlan's certification is certainly not a model of clarity,
4 and I think it's important to clear that one up.

5 By the way, the -- let me get to that first.

6 So this is document -- Page 82 of 221 of -- of 221
7 pages, document 28976. Mr. Murdica writes on that day,
8 November 5, 2023. Now, it's interesting, in his certification,
9 it's a little unclear because his certification talks about
10 when Conlan was at -- was at Faegre Benson in 2021, '22, and
11 then he jumps to 2023. So why? Because what's happened is
12 that, apparently, at some point, now Conlan is absolutely at
13 Legacy Solutions. He's on his own. He no longer believes in
14 the LTL matter, but he had already told the general counsel, or
15 Mr. Haas, whatever he is, at J&J: I'm not buying this whole
16 thing I cooked up, which is the LTL, you know, two-step
17 approach.

18 And he -- and what Mr. Conlan, who is so focused on
19 the disclosures that Mr. Conlan is making, Mr. Murdica -- I'm
20 sorry -- Mr. Murdica says to Mr. Conlan is the following: You
21 learned highly privileged information about J&J and LTL
22 strategies from the attorney-client relationship.

23 So what was the attorney-client relationship? It
24 wasn't 2023. It was, as you know, while a partner at Faegre
25 Drinker Biddle Reath, FB -- FDBR in 2020 and '21. It was two

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1 years before.

2 So obviously, a lot happened after that, because he
3 had the idea for the whole bankruptcy thing with the LTL. He
4 apparently didn't like his own idea later on. There is zero
5 proof that he had any -- and Mr. Murdica, who is the, you know,
6 Doberman Pinscher for J&J, attacking Mr. Conlan, he doesn't
7 come out and say in 2023, and you had other information too.
8 He's focused on one narrow little strip of information which is
9 stale.

10 So that Supreme Court case that now says you have to
11 have significantly harmful, how does J&J conceivably meet that
12 burden? Because their own evidence doesn't support it. Their
13 own evidence says, hey, a couple years ago, there was
14 something.

15 THE COURT: But is it your view then, counsel, that
16 there is essentially an expiration date on how long an attorney
17 should maintain the confidences of its client?

18 MR. POLLOCK: Absolutely not. 4.7 is clear on that.
19 Once I give you my word to keep something confidential, unless
20 you authorize me to release it, it's protected and privileged.
21 Agree completely, that would be a misstatement. There is no
22 proof that that happened.

23 And even what Mr. Murdica is complaining about is not
24 what happened in 2022 or '23. He's talking about what
25 Mr. Conlan was working on in 2020 and '21. What he was working

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District of New Jersey*

1 we are adjourned. Have a great afternoon.

2 THE COURTROOM DEPUTY: All rise.

3 (The proceedings concluded at 2:43 p.m.)

4 - - - - -

5
6 I certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.

8
9 /S/ Carol Farrell, NJ-CRCR, FCRR, RDR, CRR, RMR, CRC, CRI
10 Court Reporter/Transcriber

11 February 09, 2024
12 Date

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United States District Court
District of New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO.: ATL-L-2648-15

IN RE: TALC-BASED POWDER)	
PRODUCTS,)	
Plaintiff,)	TRANSCRIPT
vs.)	OF
)	STATUS CONFERENCE
JOHNSON & JOHNSON, JOHNSON)	
& JOHNSON CONSUMER)	MCL NO. 300
COMPANIES, INC. f/ka)	
JOHNSON & JOHNSON CONSUMER)	
COMPANIES, INC., IMERYS)	
TALC AMERICA, INC., f/k/a)	(Via Zoom)
LUZENAC AMERICA, INC.,)	
PERSONAL CARE PRODUCTS)	
COUNCIL f/k/a COSMETIC)	
TOILETRY AND FRAGRANCE)	
ASSOCIATION (CFTA), JOHN)	
DOES/JANE DOES 1-30,)	
UNKNOWN BUSINESSES AND/OR)	
CORPORATIONS 1-50,)	
Defendants.)	

Place: Atlantic County Courthouse
1201 Bacharach Blvd.
Atlantic City, NJ 08401

Date: February 14, 2024

BEFORE:

THE HONORABLE JOHN C. PORTO, J.S.C.

TRANSCRIPT ORDERED BY:

JEFFREY M. POLLOCK, ESQUIRE
(Fox, Rothschild, LLP)

APPEARANCES:

RICHARD GOLOMB, ESQUIRE
(Golomb, Honik, PC)
Attorney for the Plaintiffs

CHRISTOPHER PLACITELLA, ESQUIRE
(Cohen, Placitella & Roth, P.C.)
Attorney for the Plaintiffs

STEVE BRODY, ESQUIRE
(O'Melveny & Myers, LLP)
Attorney for the Defendants

APPEARANCES (Cont'd.):

SUSAN SHARKO, ESQUIRE
(Faegre, Drinker, Biddle & Reath, LLP)
Attorneys for the Defendants

JEFFREY M. POLLOCK, ESQUIRE
(Fox, Rothschild, LLP)
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Audio Recorded
Operator: Catherine Mauro

1 (The following was held via Zoom at 1:36 p.m.)
2 THE COURT: Okay, Chris, you can have
3 everyone come in from the meeting room. Good
4 afternoon, Counsel. It's Judge John Porto, February
5 14, 2024. We have -- we're on the record. I'm in the
6 Atlantic County Civil Courthouse. Today -- yesterday
7 was a weather-related day. I was in Cape May. This is
8 a continuation of the order to show cause that was
9 filed on behalf of J&J and LTL in In Re: Talc Powder --
10 Talc-Based Powder Product, Master Docket Number ATL-L-
11 2648-15, Case Number 300. And I have identified -- my
12 staff has identified on the Zoom -- we're conducting
13 this by Zoom -- is I have Mr. Birchfield, Mr. Pollock,
14 Mr. Szabo, Mr. Golomb, Mr. Chris Placitella, Stephanie
15 Sherman, Leonard Winters, Steven Brody, Susan Sharko,
16 Jasmine Castro, Suzanne Turpin, Jenn Berryman, Esquire,
17 and I think I'm missing someone -- did I get everyone?
18 UNIDENTIFIED SPEAKER: Is Ms. Sharko on?
19 THE COURT: Yes.
20 MS. SHARKO: I am.
21 UNIDENTIFIED SPEAKER: Okay.
22 THE COURT: That's all I have. So, why don't
23 we start? Ms. Sharko, with J&J/LTL attorneys, why
24 don't we have the appearance of counsel?
25 MS. SHARKO: Yeah, Susan Sharko, from Faegre,

1 Drinker, for the (inaudible).

2 MR. BRODY: Good afternoon, Judge Porto.

3 This is Steve Brody for Johnson & Johnson and LTL.

4 MR. POLLOCK: Good afternoon, Judge, and
5 thank you for lettering us appear by Zoom. This is
6 Jeff Pollock from Fox, Rothschild on behalf of Beasley
7 Allen and Mr. Birchfield.

8 MR. GOLOMB: Good afternoon, Your Honor,
9 Richard Golomb for the plaintiffs in this litigation.

10 MR. PLACITELLA: Good afternoon, again, Your
11 Honor. Chris Placitella, here, also on behalf of the
12 plaintiffs.

13 MS. SHERMAN: Your Honor, good afternoon,
14 Stephanie Sherman, also, not speaking, just monitoring,
15 and I'm here on behalf of plaintiffs.

16 MS. TURPIN: Good afternoon, Your Honor.
17 This is Suzanne Conlan from Reilly, McDevitt and
18 Henrich. I'm appearing on behalf of PCPC, just to
19 monitor, as well.

20 THE COURT: Everyone else is just observing,
21 which is certainly appropriate. Okay. So, you're
22 welcome, certainly, conducting this by Zoom much more
23 easier logistically. This is -- I look at this as a
24 logistic meeting -- logistical meeting. We scheduled
25 the plenary hearing on March 25. I think we scheduled

1 it in the morning. It looks like it's going to take
2 all day. The Court identified witnesses, Mr. Conlan
3 and Mr. Birchfield. So, I was really looking at,
4 Counsel, who are the other witnesses, and if there are
5 other witnesses, what I'm looking at candidly, is in
6 terms of the framework. We're -- you know, we're going
7 to be looking at, there will be relevancy objections,
8 I'm sure. I'm going to be looking at, candidly, within
9 the confines of the declaration that was submitted on
10 behalf of Mr. Haas, and then certifications from
11 everyone else, I'm going to be looking at, really, in
12 the context, generally, as those documents framing
13 where we are, I'll probably permit a little bit of
14 latitude. But I'm really looking at not going too far
15 afield, you know, I think it comes down to credibility
16 determinations. And that's why I found it was
17 necessary for a plenary hearing.

18 Mr. Pollock, any thoughts?

19 MR. POLLOCK: I have a number of thoughts,
20 Judge, and, you know, one of the things you're taught
21 in law school is, don't argue with the Judge, so I'm
22 not going to argue with you. But I would like to make
23 a few observations, and because I did think about this
24 a lot after I looked at the hearing -- after I looked
25 at your order.

1 The first one is that, as the Supreme Court
2 said in Truepose, that the regulation of lawyers is of
3 constitutional dimension under the New Jersey
4 Constitution. And that triggered in my mind the due
5 process clause, which raises the question, what exactly
6 is Beasley Allen, Mr. Birchfield accused of? And I'm
7 not being glib. I understand we've had extensive
8 discussions. We've had briefing. I get all that. And
9 you and I have both read them. But, so far, J&J have
10 said, they cannot identify an RPC violation. It's
11 something else. And in my view, it has to be an RPC
12 violation or we shouldn't be here.

13 So, I'm raising the question up front for
14 Your Honor and for Mr. Brody, what exactly is the
15 accusation? The best I can do is kind of what you did,
16 RPC 1.6, confidentiality of information; RPC 1.9, 1.10,
17 you know, the duty you owe the prior client, et cetera.
18 But I do think that we have to grapple with that
19 seriously because I have to advise Mr. Birchfield and
20 the Beasley Allen firm of exactly and precisely what it
21 is they're being accused of.

22 The second thing I looked at was called Yuna,
23 and this is Yuna, and this is a (inaudible) -- I'm sure
24 you've studied it -- you quoted the opinion in your
25 brief, in your -- and you quoted those opinions in your

1 opinion. At 128, 129, the Supreme Court gets into what
2 I call the muddy or tacky issue. How do you go about
3 proving the proposition, and let's assume it is 1.6,
4 1.9, 1.10. That's the best I can see. So, let's
5 assume it is that.

6 To me, then, the question is, you know, what
7 proofs are we looking at. And, realistically, I'm
8 assuming Mr. Brody, Ms. Sharko and J&J are all
9 competent people and competent counsel. You have asked
10 them to produce, if they have evidence, either in
11 camera and Judge Singh (inaudible). So, what we've got
12 is a certification from Mr. Haas and a certification
13 from Mr. Murdica. But they have not provided what I
14 would call the smoking gun, which is the document where
15 Haas, Mr. Birchfield and Mr. Conlan were sharing super
16 secret confidential J&J information. So, to me, the
17 question, then, is well, what are we going to add to
18 the exercise? That's why I -- I understand the choices
19 you've made, which are Conlan and Birchfield. I'm not
20 sure what the Haas and Murdica would add, other than
21 hearsay, frankly, because I can describe the
22 activities. They can describe the activities. But
23 none of that, really, I think, is going to shed light
24 on the fundamental question which is -- I -- I think
25 these are the ones you're going for -- did Mr. Conlan

1 share J&J's confidential information that Mr. Conlan
2 learned while at the Faegre firm with Beasley Allen. I
3 think that's the big question.

4 On the flip side of that is, did Andy
5 Birchfield or Beasley Allen receive information that
6 belonged to J&J that Mr. Birchfield learned while at
7 Faegre? And my thought is, and, obviously it's your
8 courtroom, and as I've said before, I respect the fact
9 that you're trying to do everything you can to follow
10 the Rules. I expect completely that you're doing that
11 seriously, and you're studying both the record and the
12 Supreme Court opinion. So, I throw that out there.

13 My thought is that that should be the end of
14 the inquiry. But if you find that there is something
15 that it -- that something did happen, then there is one
16 more question we have to ask, which is, again, under
17 Yuna at 127, 128, was that disclosure significant, and
18 did it really have an impact. But I started with the
19 fundamental question up front, to put it glibly, what
20 are we doing here, because you've got the
21 certification. Let's assume that Mr. Conlan and Mr.
22 Birchfield both say, yep, I didn't -- I didn't send/I
23 didn't receive, I'm not sure where else we go. And
24 that -- that -- I think it's worth grappling that issue
25 a little bit, because I'd like to know where we're

1 going.

2 I hope I haven't overstated my welcome, but
3 I'm just kind of framing the issue so I know how to
4 prepare with my client.

5 THE COURT: You haven't, Mr. Pollock, and I
6 appreciate that. I have sets of certifications, one
7 declaration. The rest are certifications. And they
8 are all diametrically opposed. So, for me, who do I
9 believe? Who has -- who -- who is credible? The only
10 way I can determine credibility is by looking at that
11 witness, getting a sense and using those factors that
12 we instruct juries to do. Is it reasonable? Is there
13 any contradictory information? Are they testifying
14 with an intent to deceive the Court? Those factors.
15 So, I can't determine credibility from the papers, Mr.
16 Pollock, Mr. Brody, everyone, and that's why I need to
17 look at, you know, we're going to do this by -- no,
18 we're all coming in person. That witness is going to
19 be sitting here about six feet away from me. And I'm
20 going to make that determination of credibility as to
21 whether there is an actual violation of the RPCs.

22 The appearance is gone. Has to be actual.
23 Has to be significant. So, I got -- so, that's what
24 I'm doing here, Mr. Pollock. I identified Mr.
25 Birchfield and Mr. Conlan, and I left open the

1 possibility for anyone else I'd like to hear from. Do
2 you think it's -- do you need any other witnesses, Mr.
3 Pollock?

4 MR. POLLOCK: I don't think so, because
5 anything else would be hearsay, and the question, for
6 example, if Mr. Haas or Mr. Murdica were to take the
7 stand, how do I ever test the proposition of their
8 testimony, and how do you ever evaluate the actors,
9 here? But I agree with -- Your Honor, as I promised
10 you up front, I'll stand by my word, you have the
11 absolute right, and you've done so, to request a
12 hearing, we will be there on the 25th. But I do think
13 the universe should be, did Mr. Conlan share anything?
14 Do you believe Mr. Conlan is a truthful, honorable man?
15 And did Mr. Birchfield receive anything? I'd argue
16 that that should be the beginning and the end of the
17 inquiry.

18 THE COURT: I don't disagree.

19 Mr. Brody, what are your thoughts?

20 MR. BRODY: Your Honor, I think -- first of
21 all, I think we've strayed a bit from logistics, but
22 I've been taking notes on what Mr. Pollock has said
23 about how he sees the framework for this hearing. I
24 think it is going to be important, given the fact that
25 Your Honor indicated you want to make credibility

1 determinations that you also hear from Mr. Haas and Mr.
2 Murdica, and they are prepared and available to testify
3 on the 25th. We have a situation here where the case
4 law makes it clear that, as the movant, moving for
5 disqualification, the burden is on the J&J and LTL to
6 make the case, establish facts so that -- that --
7 showing that disqualification is required. We think we
8 could do that. But given Your Honor's interest in, and
9 understandable interest in, making credibility
10 determinations in this instance, I think it's important
11 that you hear from them.

12 I also think it's important that you hear
13 from them because we've heard extensive argument from
14 counsel for Beasley Allen, from Mr. Pollock, both here
15 and in the Federal MDL hearing that took place last
16 week, that somehow the work that Mr. Conlan was doing,
17 when he was outside counsel for Johnson & Johnson, in
18 the same matter that we're addressing here, the Talc
19 litigation, that somehow that is not germane to what he
20 presented, jointly, with Mr. Birchfield to Johnson &
21 Johnson, to what he was advocating, you know, last
22 October when he wrote to J&J's treasurer and said, Mr.
23 Birchfield and I, along with our chief investment
24 officer, want to come in and present our settlement
25 matrix to you.

1 Given those extensive arguments that we
2 actually just heard again the idea from Mr. Pollock
3 that somehow this isn't significant or we can't show
4 that it's significant, I don't think the Court can
5 evaluate that without hearing from Mr. Haas as to --
6 and it's not hearsay. Mr. Haas was involved in working
7 with Mr. Conlan. Mr. Murdica worked with Mr. Conlan as
8 outside counsel for Johnson & Johnson. So, having them
9 come in and talk about what it is they worked on and
10 why it is that what they worked on is germane to what
11 is being advocated by Mr. Birchfield and Mr. Conlan now
12 is a significant part of the inquiry of the Court. And
13 it also goes to, specifically, the question of
14 confidential information being shared and violations of
15 the Rules of Professional Conduct.

16 So, I think it is very important that the
17 Court hear from them. I don't know that their
18 testimony has to be lengthy, but it is -- it is
19 critical to that presentation and critical to the fact
20 that the burden here rests on Johnson & Johnson. And,
21 given that, what I would suggest is -- and, obviously,
22 I defer to Your Honor as to how you want to conduct the
23 hearing -- but would suggest that Johnson & Johnson
24 call Mr. Haas and Mr. Murdica first, and the Court hear
25 from them, direct examination, any cross-examination

1 that Mr. Pollock wants to do while they are on the
2 witness stand, before hearing from Mr. Birchfield and
3 Mr. Conlan, presumably through direct examination by
4 Mr. Pollock, after which they would be cross-examined,
5 and some of the assertions that they make on direct
6 examination could be tested.

7 You know, I'm suggesting that simply because,
8 as the party with the burden, as the movant, I would
9 think we would put our witnesses on first, and that
10 would be followed by witnesses. And I don't know if
11 there are going to be other witnesses that Mr. Pollock
12 thinks are important that he may call as counsel for
13 Beasley Allen. But that's the way I see it going.

14 THE COURT: What I'm looking at, Mr. Brody,
15 is, you know, obviously the burden rests with your
16 client for this disqualification. What I was, you
17 know, looking at, when I consider the Haas declaration
18 and certification, and then the Murdica certification
19 is, you know, what they did and what their
20 responsibilities for J&J, you know, maybe could be
21 stipulated. What I'm looking at is the connection
22 between what they worked on with regard to this
23 settlement matrix, and, you know, are they going to
24 come in and say, Judge, we have this diagram, and we
25 have this note structure that we conducted in a

1 meeting, and Mr. Conlan was there, and we formulated
2 this. Here's our meeting minutes, and this is what our
3 settlement structure was, and then, Judge, lo and
4 behold, after Mr. Conlan leaves the law firm, he comes
5 up, and all of a sudden, he's presenting the exact
6 same settlement structure that we developed.

7 Now, Mr. Conlan says, in his later
8 certification, I developed these concepts and these
9 ideas way before I joined Faegre, Drinker, and this was
10 from my 30 years in that prior position that I
11 developed those ideas and this settlement structure.
12 So, you know, when I'm looking at them, Mr. Brody, is
13 that what we're going to see? Because I think that
14 would be, then, something that could be -- that moves
15 the needle. I'm using that just as a hypothetical, as
16 an example. So, in terms of, you know, Mr. Haas and
17 Mr. Murdica, you know, I thought a lot of that could be
18 stipulated to, what they're going to be testifying to.
19 I'm looking at, really, you know, narrowing down, you
20 know, zoning in with a microscope, saying, I'm looking
21 at what happened; what went on; why does Johnson &
22 Johnson have these thoughts; what actually happened;
23 what do we have in terms of documentation or is it just
24 testimony; and then I need credibility.

25 So, what do you think, Mr. Brody?

1 MR. BRODY: I think that you've hit the nail
2 on the head, Your Honor, and I think that is exactly
3 what their testimony will go to is -- is the connection
4 that the Court is looking to assess, to evaluate for
5 this hearing. And I think it's -- it's something that
6 is going to be very important to address the arguments
7 that we've seen from Beasley Allen. It's -- you know,
8 it was a very large part of the argument that we heard
9 last week from Mr. Pollock down in Trenton, and I -- it
10 has been a significant part of the briefing that we've
11 seen from Beasley Allen on this issue.

12 But Your Honor is getting directly to what I
13 think the heart of the question is and what we will be
14 able to present to the Court through the testimony from
15 Mr. Haas and Mr. Murdica. Now, that said, you know,
16 I'm certainly as interested as anyone here is in seeing
17 if there are stipulations that can be reached that will
18 shorten the proceedings, simply things and allow us to
19 really hone in on what is going to be most central for
20 the Court.

21 THE COURT: Thank you, Mr. Brody.

22 Mr. Pollock, any thoughts?

23 MR. POLLOCK: A number, Your Honor. One,
24 it's not my case. It's their case to bring. I'm
25 responding. So, what we had talked about before, when

1 Mr. Brody and I met and conferred was they were calling
2 these witnesses. I don't intend to call any witnesses,
3 other than Mr. Brody has indicated he might want to
4 call an expert, but I don't -- that has not been
5 discussed today. So, my view is, this is their case.
6 They are their witnesses. They can call whom they see
7 fit.

8 With regard to the witnesses, it would seem
9 to me, again, Judge, this is -- you know, you were a
10 prosecutor, so you know trial practice better than
11 most. My view would be that, under the Rules, the
12 first question is, did Conlan and Birchfield share
13 privileged information. Haas and Murdica aren't going
14 to know anything about that. They have no personal
15 knowledge what communications that Conlan shared with
16 Mr. Birchfield and the Beasley Allen firm and vice
17 versa. So, that would all be hearsay.

18 If you reach the conclusion, in the course of
19 the hearing, that there was a -- there's a significant
20 question whether there was an exchange or if there was
21 an exchange, and at that point, you get to the second
22 prong, which is, under Yuna, was that information
23 significant. Right. But you first have to reach the
24 conclusion there was anything, and if there is no 1.6,
25 and I would argue there is no 1.9, 1.10. Did you ever

1 represent the plaintiffs? Did you ever retained as an
2 expert by the plaintiffs? Did you serve as counsel for
3 the plaintiff? Any of those questions would get 1.9
4 and 1.10. Yes, Mr. Conlan and Mr. Birchfield can
5 answer those questions. With regard to 1.6, was there
6 any information? Mr. Conlan and Mr. Birchfield can
7 answer those questions. But once you open Pandora's
8 Box, and you start allowing testimony regarding what
9 Mr. Haas and Mr. Murdica were doing for J&J, that
10 invites the exact minefield that Yuna was trying to
11 avoid, which is, yes, it's your burden, but you have
12 invited them, in camera, to produce those documents.
13 Judge Singh did the same thing. To the best of my
14 knowledge, there has been no production of documents in
15 camera, and I certainly don't want to get sandbagged at
16 trial with a -- and I'm not suggesting Mr. Brody would
17 do it, and I'm not suggesting you would permit it, but
18 you can understand why I would be concerned about it.

19 That raises a real question with regard to
20 Haas and Murdica, because I don't -- other than saying,
21 this is what I've seen, and this is what I reviewed,
22 and this is what my recollection is, I don't understand
23 how we test that proposition. But if we don't get --
24 if we get to the point where you are satisfied that
25 Conlan can describe what he did, and that he did not

1 disclose confidential information, Birchfield can
2 disclose what he did over time, and he didn't
3 get/didn't receive the confidential information, that
4 may end the inquiry. So, I would suggest we invert the
5 order of witnesses. Start with Conlan and Haas --
6 Conlan and Birchfield, and then, at that point, it's up
7 to you completely, because you're the finder of fact,
8 where you want to do.

9 I think the starting with Haas and Murdica is
10 starting on your left foot, because you're assuming the
11 answer. You're assuming there is a problem.

12 THE COURT: And let me just add, Mr. Pollock,
13 I wasn't a prosecutor. I was a county counsel for Cape
14 May County, so I just want to --

15 MR. POLLOCK: I'm sorry.

16 THE COURT: -- just so the record is clear
17 that my prior position 15 years ago was what it was, so
18 I only do that --

19 MR. POLLOCK: Well, you can attack either
20 way, so it's fair enough.

21 THE COURT: Well, thank you. Now, you know,
22 Mr. Brody, you have the burden, and, as you
23 acknowledge, Mr. Pollock is not going to call any
24 witnesses. You know, I would defer -- Mr. Pollock has
25 made a suggestion with the order of witnesses. You

1 know, for me, a party with the burden, I don't want to
2 go in and say, Mr. Brody, you know, here is your order,
3 but that's why I used the example of the document.
4 Now, Mr. Pollock, I haven't seen any -- I don't believe
5 I've seen anything other than what counsel has seen. I
6 didn't get anything in camera. I got everything that
7 was submitted, and I think it was on eCourts.

8 Now, and what I'm looking at, in terms of
9 Conlan and Mr. Birchfield, is -- and I use this -- the
10 settlement, because everybody knows what the settlement
11 structure proposed by Legacy is, so I wasn't inviting
12 any attorney/client -- anything -- any further
13 attorney/client privilege, because the world knows it's
14 this settlement structure that Legacy has gone -- you
15 know, gone out and, you know, tried to garner support
16 for that purportedly was developed when he was at
17 Faegre, Drinker with Mr. Haas and Mr. Murdica, so
18 that's why I use that example. So, I wasn't going to
19 go any further, opening any further -- any other door
20 that goes into J&J's attorney/client privilege. So,
21 that's why, you know, I carefully chose, you know, what
22 I was looking at.

23 Mr. Brody, any thoughts?

24 MR. BRODY: I -- I -- well, I think you --
25 and Your Honor, you know, is correct that, as the party

1 with the burden, we ought to present first. I think
2 the question that Mr. Pollock asked, you know, was
3 there kind of an exchange of privileged or confidential
4 information is not a question that you can answer
5 without the underlying framework, which is, you know,
6 what exactly was -- and let's flush it out and assess
7 the credibility of Mr. Haas and Mr. Murdica on that --
8 what was the scope of Mr. Conlan's representation of
9 J&J when he was outside counsel for J&J and what types
10 of confidential and privileged communications was he
11 exposed to. That, then, forms the background for
12 making the assessment, based on testimony from Mr.
13 Birchfield and Mr. Conlan, as to whether the Court, you
14 know, finds them credible, finds denials of sharing
15 confidential information to be credible or not
16 credible.

17 So, I think calling Mr. Haas and Mr. Murdica
18 first really frames the issues for the Court in the way
19 that -- based on Your Honor's comments I think is going
20 to be helpful to the Court.

21 THE COURT: Can there be some stipulation --
22 I don't want to run too far afield. I know you've got
23 to set the table, provide context, Mr. Brody. You
24 know, if counsel thinks, you know, maybe gets the idea,
25 you know, we're going to be -- I don't envision this,

1 candidly, being more than the morning, you know, when I
2 look at what I'm anticipating. I don't know what I'm
3 going to hear. But what I anticipate hearing is maybe
4 three hours and a decision shortly thereafter. I've
5 set the law out. I've provided context. I said to
6 counsel today -- I thought I was clear, but I want to
7 be abundantly clear -- you know, I'm looking at
8 credibility. I mean, you know, who do I believe, and I
9 can't do it just looking at these papers. So, you
10 know, can there be some context stipulations with
11 regard to Mr. Haas' and Mr. Murdica's testimony? I
12 only know that if you, Mr. Brody and you, Mr. Pollock,
13 have an idea to sit down with each other and discuss
14 that.

15 MR. POLLOCK: Oh, yeah, Your Honor, a couple
16 of quick thoughts. So, I'm assuming, right now, that
17 what I'm looking at is RPC 1.6.

18 THE COURT: That's what I am.

19 MR. POLLOCK: That sounds to me like that's
20 the allegation, you know, J&J didn't make, but that's
21 where we're going. So, if that's the case, I'm going
22 to prepare the matter for -- (inaudible) committee,
23 but, you know, the fact is I need to know and prepare
24 Mr. Birchfield. I don't represent Mr. Conlan as to
25 what has happened -- what the allegation is, what the

1 out.

2 So, to the extent this is an objection to the
3 use of exhibits during the hearing, I -- you know, it's
4 new. I'm not thinking anything extensive at all, but
5 there may be things that provide context when you're
6 actually presenting testimony. There may be documents
7 that I think or exhibits that I think are potentially
8 important to question Mr. Birchfield or Mr. Conlan
9 about. And so what I am proposing is, so that there
10 are no surprises, you know, obviously, it's impossible
11 to predict exactly what might ultimately be relevant to
12 a cross-examination, but what I'm hoping to do is
13 streamline things. And that's where the suggestion for
14 an advance exchange of potential hearing exhibits comes
15 into play.

16 THE COURT: Do you have those available, now,
17 to share, Mr. Brody?

18 MR. BRODY: Excuse me?

19 THE COURT: Do you have those documents now
20 or do you need to go speak with your client?

21 MR. BRODY: I don't need to speak with the
22 client before identifying anything for that exchange.

23 MR. POLLOCK: Your Honor, I object. I object
24 strenuously on this. I am -- I -- the documents that
25 (inaudible). This has now been argued twice to you.

1 It's been briefed fully. It's been submitted to the
2 Federal District Court. They have presented, these are
3 the facts. These are the -- whatever documents we've
4 got in the record, Federal and State Court, in my view,
5 are fair game. You are talking about the
6 constitutional-level right to practice law. You're
7 talking about the right to 12,000 people who have
8 chosen the Beasley Allen firm. And, now, suddenly,
9 it's can you bar the door, because I have no idea if a
10 few -- I don't know what these few documents mean. I
11 have no idea what do we do with -- I mean, I thought
12 the record was closed. And, on that basis, any of
13 those documents are fair game. I agree. But I can't
14 -- I can't -- I vehemently object to anything else
15 being logged in at this point.

16 THE COURT: Well, in terms of continuity --

17 MR. GOLOMB: Your Honor, could I add
18 something?

19 THE COURT: Hold on, Mr. Golomb.

20 Mr. Pollock, this started with regard to
21 context, how do we get context in stipulations, so I
22 was looking, really, for material that will provide
23 you, Mr. Pollock, with context as to what Mr. Conlan
24 did. That's the direction that we were taking -- that
25 I was taking. So, I'm looking at documents for context

1 as to what Mr. Conlan do at Faegre, Drinker, on behalf
2 of J&J.

3 MR. POLLOCK: Let's go down that minefield,
4 because I think we're going to quickly find that this
5 is a slippery slope that Yuna is telling us not to go
6 down. We get his time sheets from whatever he worked
7 on. Then I'm going to want to know, okay, what was the
8 agenda for that meeting? How many people were there?
9 Was there a transcript of those meetings, and what role
10 did Mr. Conlan actually play, as opposed to the field
11 of 5,000 other people who were there? Were there
12 emails back and forth exchanged regarding each of those
13 communications? What role did Mr. Conlan play? What
14 role did Mr. Haas play? And, to me, what concerns me
15 here is, J&J is going to be jumping up and down, in my
16 view, appropriately so, hey, they're using confidential
17 stuff. You're getting into all of our internal
18 thoughts, et cetera. But if I don't -- you know, I'm
19 either doing my job or I'm not. And, respectfully, I
20 don't know how you -- how could I allow, when there is
21 so much animosity and tension between the two sides,
22 how could I, with all due respect to Mr. Brody who is a
23 capable, decent guy, how could I allow him to
24 cherry-pick the documents he wants, when I don't have
25 the full, unfettered ability to say that these are 52

1 documents to show that's nonsense. I think that's
2 exactly why Yuna says, look, you want to go there,
3 you've got to do so with trepidation, because, right
4 now, if we don't stick with the record we've got, which
5 is what I would respectfully and strongly suggest we
6 do, I don't know how I put a fence around what is the
7 edge of discoverability, because I've got to discredit
8 that -- those statements. The only way to do it is to
9 get full-blown discovery and get into it.

10 THE COURT: So, it sounds like the only way
11 we're going to get a context of, then, what Mr. Conlan
12 did for J&J is through the testimony of Mr. Murdica and
13 Mr. Haas?

14 MR. POLLOCK: My view, Your Honor, is it's
15 their case. They can present it as they see fit.
16 They've got the proofs they want to produce. They have
17 cited, I assume, since they've got great counsel, and
18 they have a number of them, they've cited the evidence
19 they think they've got. It would be completely unfair
20 to me, Beasley Allen and Andy to suddenly say, by the
21 way, we've got a few more things we'll allow in, and
22 now, I have no idea how far that fence is.

23 My view is, they have chosen the proofs they
24 wanted. That was their choice. And it wasn't my
25 choice. It was their choice. And they've been given

1 the opportunity by you, personally, Judge, and by Judge
2 Singh, if you've got anything else, show it to me.
3 And, to me, that raises -- you know, obviously, that
4 raises a whole different level of issues, but you can
5 understand that I'm -- please understand, I'm not
6 trying to be difficult. I know you're doing your job.
7 I hope you understand I am trying to earnestly and
8 sincerely do my job. I've got to have a fair playing
9 field, and allowing them to suddenly say, well, I've
10 got six more documents that I think is helpful, that
11 raises a real hornet's nest of, well, what else is
12 relevant, because, if you want me to go into discovery,
13 I can go into discovery-mode, we'll be here next
14 Summer.

15 THE COURT: So, Mr. Brody, the context of Mr.
16 Conlan's employment will be by way of testimony, no
17 further documents.

18 MR. BRODY: Okay.

19 THE COURT: All right. Mr. Golomb, you
20 wanted to add something?

21 MR. GOLOMB: I did, Your Honor. I think you
22 asked a very relevant question, and that is when you
23 said, I thought that the record was closed. And, you
24 know, something that hasn't been talked about here
25 today, and I don't know if you've had an opportunity to

1 look at the transcript from the hearing in front of
2 Judge Singh?

3 THE COURT: I did.

4 MR. GOLOMB: But Judge Singh -- so, you know
5 that Judge Singh, at the very beginning of that
6 hearing, asked a very important question of both Mr.
7 Pollock and Mr. Brody, and she asked them both, can I
8 rule on this today, based on the record that I have or
9 should I wait until after March 25th? And both Mr.
10 Brody and Mr. Pollock agreed that this record is
11 closed, and that you can rule today. And so, it is
12 really surprising to hear, suddenly, that, no, this
13 record is not closed, and we want to not only present
14 these witnesses that the Court did not ask for, but
15 somehow, there is going to be some new documents that
16 are going to be produced. They were not produced in
17 the bite of the apple number one on January 17th or
18 bite of the apple number two that occurred shortly
19 thereafter that when you -- when Your Honor allowed the
20 supplemental certifications.

21 THE COURT: Well, I might have opened that
22 door, Mr. Golomb, by for context as to what Mr. Conlan
23 did, so I don't disagree with everyone. The record is
24 closed with regard to documents. Whatever comes out is
25 going to be by way of testimony from the witnesses that

1 (No audible response)
2 THE COURT: All right, everyone, very nice
3 seeing everyone. We're back. The courthouses are open
4 today. It's good to see everyone. Let me know -- if
5 you need me, let me know, Mr. Brody, Mr. Pollock, on
6 that --
7 MR. BRODY: Absolutely.
8 THE COURT: -- disqualification issue.
9 Thanks, everyone.
10 ALL COUNSEL: Thank you, Your Honor.
11 THE COURT: You're welcome.
12 We can go off the record.
13 (Proceedings concluded, 2:30 p.m.)
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C E R T I F I C A T I O N

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6 I, Lois A. Vitarelli, the assigned
7 transcribers, do hereby certify the foregoing
8 transcript of proceedings recorded on Court Smart
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24 DATE

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CIVIL PART
ATLANTIC COUNTY
DOCKET NO.: ATL-L-2648-15
A.D. # _____

IN RE: JOHNSON AND JOHNSON) TRANSCRIPT
TALCUM-BASED POWDER OF
PRODUCTS LITIGATION HEARING

)

Place: Atlantic County Civil Crt.
1201 Bacharach Blvd.
Atlantic City, NJ 08401

Date: March 25, 2024
AFTERNOON SESSION

BEFORE :

HONORABLE JOHN C. PORTO, J.S.C. AND
RUKHSANAH L. SINGH, U.S.M.J.

TRANSCRIPT ORDERED BY:

JEFFREY M. POLLOCK, ESQ.,
(Fox Rothschild)

APPEARANCES:

JEFFREY M. POLLOCK, ESQ.,
MICHAEL SABO, ESQ.
(Fox Rothschild)
Attorney for Birchfield

STEVEN BRODY, ESQ.,
Attorney for Johnson & Johnson, LTL

Transcriber: Sharon Conover
PHOENIX TRANSCRIPTION
796 Macopin Road
West Milford, NJ 07480
(862) 248-0670

Audio Recorded
Recording Opr: Heather Canale

1 Q The first thing I want to ask you, Mr. Haas,
2 your testimony about the kinds of issues and privilege
3 and confidential communications that Mr. Conlan was
4 privied to, exposed to, a part of while he was outside
5 counsel for Johnson & Johnson is that based on your
6 personal knowledge?

7 A Yes, sir.

8 Q And how did you acquire that personal
9 knowledge?

10 A Through group calls, through individual calls from
11 Mr. Conlan, through individual emails with Mr. Conlan,
12 going out to dinner, going out to lunch with Mr.
13 Conlan. Group calls where we had deliberations among
14 the entire outside counsel group.

15 So, it was one interaction after the other
16 throughout for the entire time that he was retained by
17 Johnson & Johnson. He was an integral part of our
18 outside counsel group that worked with our internal
19 counsel group to develop and implement the strategies
20 for both the litigation, adjudication, and a resolution
21 of the talc claims.

22 Q And you've talked about the outside counsel
23 team. But did you have one-on-one direct
24 communications with Mr. Conlan about privileged and
25 confidential strategic considerations related to the

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03/28/24
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1 that point because we now know it wasn't true but I'm
2 telling you, contemporaneously at the time and given
3 the way this was written, that is exactly what it was
4 conveying to us.

5 That suddenly, Mr. Conlon had said, well, let me
6 go out and now contact the other side and start working
7 against you. That's egregious. We now know it's even
8 more egregious because it wasn't the first time.

9 Q Well, that was going to be my next question
10 for you. Have you since come to learn that Mr. Conlon
11 and Mr. Birchfield were working together throughout the
12 pendency of the mediation that was taking place in the
13 L.T.L. bankruptcy in the Summer of 2023?

14 MR. POLLOCK: Objection, Your Honor. This
15 goes with the Best Evidence Rule. There is no evidence
16 that this ever occurred. All I have is rank
17 speculation from Mr. Haas as to discussions he was not
18 even a part of. How do I possibly cross examine when
19 they have not produced a single scrap of paper in the
20 record to support any of Mr. Haas' hypothesis?

21 All I have is rage from him, I get it, he's
22 angry but I'm entitled to documents and I can't oppose
23 a witness when he has not produced the documents that
24 UNA squarely says, you have a Hobson's choice, produce
25 it or don't. I am deeply concerned about where this

1 testimony is going because there's no evidence
2 whatsoever to support it.

3 THE COURT: Mr. Brody.

4 MR. BRODY: Your Honor, well first of all,
5 Mr. Haas --

6 THE COURT: I believe this is a credibility
7 determination, to the extent that there's no document
8 and the Court permits the questions to go forward.

9 MR. BRODY: Well, let me ask Mr. Haas, I
10 mean.

11 THE COURT: I'll overrule the objection, I'll
12 give you that opportunity but there is no
13 documentation. I think we cleared that earlier in one
14 of our conversations.

15 MR. BRODY: Certainly, Your Honor.

16 BY MR. BRODY:

17 Q Let me ask you, Mr. Haas, when did you first
18 learn that Mr. Conlon and Beasley Allen were working --
19 first of all, I don't know if I got an answer to the
20 prior question before the objection, so let me ask that
21 one again, just for the record.

22 Have you since come to learn that Mr. Conlon and
23 Mr. Birchfield were working together throughout the
24 pendency of the mediation that was taking place in the
25 L.T.L. bankruptcy in the Spring and Summer of 2023?

1 wrote, "Indeed, if such a plan were confirmed, it
2 simply cannot free J and J of its direct liability."

3 Do you see that?

4 A I do.

5 Q And was that something that caused you
6 concern?

7 A He's speaking to the plan that we're proposing.
8 There is our former counsel who provided advice on that
9 very issue, inconsistent with what he's saying here but
10 he's basically taking a position with respect to a plan
11 we are currently proposing that has been deliberated
12 extensively over the course of the time frame in which
13 he was our counsel and now he's going out and opining
14 that it will never work. This is our advocate,
15 advocating against us.

16 Q Have you learned, Mr. Haas, that not only is
17 this something that was being advanced through the
18 Bloomberg article and the press release that we saw
19 from November 2nd in the media but also that, it was
20 being advanced with the investment community?

21 A So immediately after receiving this, I sent an e-
22 mail to Mr. Conlon's firm saying; stop it, you're
23 breaching your ethical obligations. Ignored.

24 On the 15th of November, I believe that was the
25 right date, we received notice that Mr. Birchfield and

1 Mr. Conlon were then pending an investor conference,
2 the Gordon Haskett Conference, in which they were going
3 to present this very proposal.

4 MR. POLLOCK: Objection, speculation as to
5 what they were going to present.

6 THE COURT: Sustained.

7 BY MR. BRODY:

8 Q I'm sorry, did you at that time come to have
9 an understanding of what they were going to present?

10 A We were advised that Mr. Birchfield and Mr. Conlon
11 were making a proposal at an investor conference, the
12 Gordon Haskett Conference, regarding the resolution of
13 the talc claims.

14 MR. POLLOCK: Same objection, Your Honor. We
15 were advised. Rank hearsay, I move to strike.

16 THE COURT: I agree, I sustain the objection.

17 MR. BRODY: That's fine, Your Honor.

18 BY MR. BRODY:

19 Q Mr. Haas, before we conclude, I want to bring
20 you back to last summer. What was going on in the
21 L.T.L. bankruptcy last summer when Mr. Conlon was
22 engaged in these, what they say are, privileged
23 communications with Mr. Birchfield and Ms. O'Dell and
24 others at Beasley Allen?

25 A There was extensive motion practice. The motion

1 to dismiss that Mr. Beasley -- Mr. Birchfield was
2 leading. There was extensive discovery with respect to
3 that, motion practice. It ultimately culminated in a
4 week-long hearing on a motion to dismiss, followed by
5 extensive post-trial findings of fact and conclusions
6 of law.

7 I suffice it to say there were myriad
8 opportunities for either Mr. Conlon or Mr. Birchfield
9 to disclose the alliance that they had formed at that
10 time and not once, not once in any of those motions,
11 submissions, discoveries, including the deposition of
12 Mr. Birchfield or in the week-long intensive hearing
13 followed by a full briefing on the motion to dismiss,
14 did they ever disclose that Mr. Conlon was working with
15 Mr. Birchfield.

16 And Mr. Conlon never approached me for a waiver or
17 anyone at my firm and never once asked for consent to
18 engage in that relationship, not once. There were
19 untold opportunities to do so and he never did.

20 Q And is it concerning to you now to know that
21 while Johnson and Johnson was engaged in mediation with
22 the T.C.C. in the L.T.L. bankruptcy, that your former
23 lawyer Mr. Conlon was communicating directly,
24 collaborating directly, with Mr. Birchfield and his
25 firm, on the other side of that mediation?

1 MR. POLLOCK: Objection to the word
2 collaborating. Again, it is conspiracy either in the
3 cover of darkness. They were working together, yes but
4 there's no proof of anything else beyond the fact that
5 they were communicating.

6 THE WITNESS: I can answer without
7 (indiscernible)

8 THE COURT: May be a choice of word?

9 BY MR. BRODY:

10 Q It may be a choice of word and Your Honor, we
11 will definitely get to collaborating today but for now,
12 I'll just ask you. Knowing now what you know from the
13 privilege claims that have been asserted by the
14 Plaintiff Steering Committee and what you know about
15 the work, communications, that were going on, in
16 secret, on the other side of that mediation; is that a
17 concern to you?

18 A I go back to what I said earlier. This
19 fundamentally undermines the entire judicial process.
20 It provides an unfair advantage to an adversary in an
21 adversarial system. The conversations that were being
22 had by the disclosures in the privilege log and based
23 upon the declaration submitted by Mr. Birchfield,
24 indicated they involve the same matters and the same
25 issues for which Mr. Conlon was representing us.

1 Having those communications, by their very nature,
2 is a violation of his duties to us because those
3 conversations necessarily are imbued with the
4 confidential work product, privileged information we
5 conveyed to Mr. Conlon and at extensive discussion and
6 deliberation.

7 So I go back to the core principal, it contravenes
8 the judicial process, it's contrary to the interest of
9 justice and it fundamentally undermines the adversarial
10 system.

11 Q Was Mr. Conlon privy to privileged and
12 confidential information about J and J's negotiating
13 strategy, in its attempt to resolve the litigations
14 pending in New Jersey and in the M.D.L., that you
15 believe would be directly relevant to the L.T.L.
16 bankruptcy mediation that went on last summer?

17 MR. POLLOCK: Your Honor, I object. There
18 has been multiple efforts at a settlement. There was
19 an effort within Amyris, there was an effort within
20 L.T.L., then there was L.T.L.2, there's been mediation
21 before people. I have no clue what time period we're
22 asking about --

23 THE COURT: Well, it was last summer. Any
24 particular time --

25 MR. POLLOCK: Is that the only time period?

1 THE COURT: Yeah, that was the time period.

2 MR. BRODY: My question --

3 THE COURT: Right, was that it?

4 MR. BRODY: I can rephrase it, Your Honor.

5 THE COURT: Okay.

6 BY MR. BRODY:

7 Q My question is, based on your knowledge of
8 the privileged and confidential communications that Mr.
9 Conlon was exposed to, whether it be talking about
10 potential resolution for the tort system, resolution
11 through the Amyris bankruptcy, resolution through
12 M.D.L., are those confidential and privileged
13 discussions that he was involved in relevant to the
14 mediation that took place last summer?

15 MR. POLLOCK: Your Honor, again, same
16 objection. Multiple discussions regarding M.D.L. I
17 can't even remember what the litany was, it was that
18 long. I am entitled, when my client is accused of
19 having violated the Rules of Professional Conduct, to
20 some facts.

21 That's what True-Post says, I'm entitled to
22 some facts. I would like to know what discussions,
23 what date, what year, where were they, what happened?
24 Because right now, I have no clue, I'm attacking a
25 boogeyman. I can't do it if I don't know what it looks

1 like.

2 THE WITNESS: I can answer without

3 (indiscernible)

4 THE COURT: Well, I understood the question.

5 Mr. Haas, you understand the question.

6 THE WITNESS: Yes, sir.

7 THE COURT: So I'm overruling the objection
8 but you know, the time frame is last summer. So is it
9 June, July, August? July, June, August, what's, in
10 terms of summer?

11 BY MR. BRODY:

12 Q My question is, is the privileged and
13 confidential information that Mr. Conlon learned during
14 the 20 months that he represented J and J relevant to
15 the mediation discussions that were going on in May,
16 June and July of last year, in the L.T.L. bankruptcy?

17 MR. POLLOCK: This is precisely my objection,
18 Your Honor. He is morphing time frames. He is not
19 talking about after Mr. Conlon formed Legacy. He is --
20 Mr. Brody is asking about all this stuff you learned
21 beforehand, whatever that time period was, is it
22 relevant to what's occurring now.

23 And if that's true, if that's really his
24 question which I think it is, I would like to know
25 which one, Amyris, L.T.L.? Which discussions, where

1 did they occur, what was discussed? Because I have no
2 idea how to value relevance. UNA says clearly, you
3 have a Hobson's choice. Put the documents in or tell
4 us what the discussions are or you don't have the
5 argument.

6 What they want to do is have the best of both
7 worlds. They want to say, I'm not going to give you
8 the facts but it's generally true, we talked about some
9 stuff and it's relevant to now. I want to know, if
10 we're going to go here and this is our big wind-up, I
11 would like to know exactly what was discussed and when.

12 THE COURT: Well, one of the points raised in
13 one of the certifications, I think it was probably Mr.
14 Birchfield saying, whatever Mr. Conlon learned, it's
15 now dated.

16 MR. POLLOCK: Correct.

17 THE COURT: Right?

18 MR. POLLOCK: Yes, sir, that's exactly my
19 point.

20 THE COURT: Well and now -- and I'm not
21 making anybody's argument here but Mr. Brody is now
22 saying, is it now irrelevant in contrary to the dated
23 statement? So I'm going to overrule the objection.
24 You can ask that question. Do you understand that
25 question (indiscernible)

CERTIFICATION

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03/28/2024
Date

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1 and Johnson. But I do want to caution you, I'm going
2 to be asking you questions about whether you looked at,
3 whether you evaluated certain issues. I'm not going to
4 ask you to reveal the substance of any recommendations
5 you made, of any analysis you received because those
6 are privileged. You understand that; right?

7 A I do.

8 Q And you understand that, that's the company's
9 privilege; correct?

10 A I understand.

11 Q All right and so if I ask you -- and just so
12 that we're on the same page, I want to make sure we're
13 on the same page. So I could ask you a question like,
14 did you analyze different resolution options available
15 to Johnson and Johnson in the summer of 2021.

16 I'm not looking for you to tell me what you
17 concluded or what somebody else said about a particular
18 option. I'm just looking for yes or no, did you do
19 that, for that type of question. Is that clear?

20 A I understand.

21 MR. POLLACK: Your Honor, I object to the
22 entire line of questioning proposed. Yuna gives him a
23 Hobson's choice; put up or shut up. Show me the
24 documents, we can inquire. You got billing sheets,
25 show them to me, you got time entries, show them to me,

7 THE COURT: Unless we ask for in-camera
8 review. So should the need arise, Mr. Pollock. I'm
9 going to overrule the objection but I understand the
10 nature of the objection. To the extent there are some
11 substantive aspects that Mr. Conlan needs to review,
12 Mr. Brody will hear, right?

14 THE COURT: So to answer, you know, yes or no
15 in that context, I understand the nature of the
16 question but you know, to have an adequate ability to
17 test the substance, we may need to see some in-camera
18 review. So I'm going to leave that avenue open for the
19 Court.

20 MR. BRODY: Absolutely, Your Honor. We're
21 prepared to proceed that way, if it becomes necessary.
22 And I will just say, I mean, we didn't hear it but that
23 sounded like another Best Evidence Rule 10-02 objection
24 and I think the law is fairly clear that, that's not a
25 valid Best Evidence Rule objection testimony about

3	A	I don't recall that.
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9 THE COURT: And how about a copy for Mr.
10 Pollack?

14 MR. POLLACK: This is precisely the problem
15 that Yuna predicted, Your Honor. She had a choice.
16 Second paragraph (indiscernible) Hobson's choice.
17 Either put up or shut up, put the documents in or
18 don't. Because you -- that client refused to put the
19 communications into the record and obviously, as you
20 both know, the crucible of cross examination is
21 critical here.

25 THE COURT: Why don't we -- with the

1 (Off the record, back on the record)

2 MR. POLLACK: So I have a proposal that might
3 solve the dilemma we've got. Which is, that we will
4 stipulate, consistent with Mr. Conlan's last three
5 answers basically, that yes, I billed for the phone
6 calls, I did hear these issues, I was there monitoring
7 the discussions, I billed my time.

8 So that solves, to some degree, the need to
9 get into infinite detail and repeat each time, were you
10 there, did you hear this? Where I maintain my
11 objection is that, if there is going to be more
12 specificity as to what exactly did he do with it, I
13 want to see the time sheets, I want to see exactly what
14 he did.

15 But I have no doubt, I will stipulate -- and
16 I haven't seen these time sheets so I'm stipulating to
17 something I haven't seen before. Hope Fox's
18 malpractice policy covers that one but the reality is,
19 I will stipulate that he billed accurately, honestly,
20 truthfully and that he heard whatever he heard and that
21 he did whatever he did. I don't think I can go any
22 farther than that.

23 THE COURT: Mr. Brody?

24 MR. BRODY: So a couple of things, Your
25 Honor. First of all, the use of the documents, for

5 But given the stipulation, you know, I wonder
6 if what we ought to do, if the stipulation is that Mr.
7 Conlan billed accurately, that his billing records are
8 correct, that they accurately describe what he did, we
9 should make those part of the record, in conjunction
10 with that stipulation.

18 THE COURT: Without hearing him and just for
19 our record, you know, my statements with regard to
20 retainer agreements. I'm not making anybody's
21 argument. I'm just letting counsel know that there are
22 other parameters at play here possibly with regard to
23 billing.

1 Pollack. I -- the Court has trouble with that because
2 there is no basis for any appropriate objection.
3 Candidly, I would like to have heard about this prior
4 to coming here today. We could have addressed it in
5 maybe a manner where a confidentiality agreement could
6 have been entered, considered, for counsel's, for
7 attorneys' eyes only.

8 So I want to make sure, in protecting our
9 record, subject to any appeal which is likely but you
10 know, we don't decide cases based on appeals. If they
11 happen, they happen, we make the best record that we
12 can. So that's my thoughts, Mr. Brody and Mr. Pollack,
13 with regard to that.

14 MR. BRODY: So I wonder, Your Honor, just, if
15 the stipulation that was proposed that, the billing
16 records are accurate, that they accurately describe
17 what Mr. Conlan did and for how long he did it, as he's
18 testified. That he felt his billing records were
19 accurate and the time is accurate.

20 If that, you know, solves the question, it's
21 -- it would be submitted by stipulation. It's
22 obviously -- I mean, frankly, we're getting into now
23 one of the reasons why New Jersey Law recognizes a
24 presumption of shared confidences in this situation.

25 THE COURT: Got it, yep.

1 MR. BRODY: Because you get into this exact
2 scenario where, you know, I have material that is
3 privileged but is, as you see right now, important to
4 the examination of a witness that the Court has said it
5 wants to hear from before deciding our motion.

6 THE COURT: Well, we're here to determine
7 whether J and J confidences were shared by Mr. Conlan
8 to Mr. Birchfield. That's what our focus here is. The
9 fact that Mr. Conlan has testified, he had privileged
10 and confidential information. He billed, he billed for
11 his time, Those bills, to the best of his
12 recollection, were accurate for his time.

13 The Court accepts that stipulation and that's
14 consistent with the testimony here. I'm not making any
15 credibility findings at this point but it's consistent
16 with what I'm hearing today.

17 MR. BRODY: Right and I just -- the next
18 question, though, is yes, he was exposed to privileged
19 and confidential information. It's what kinds of
20 privileged and confidential information that ultimately
21 becomes important, given the arguments that we've heard
22 from Beasley Allen throughout, you know, the course of
23 the Court's consideration of these motions.

24 So and I know Mr. Conlan has -- Mr. Pollack,
25 excuse me, hasn't responded to my proposal but given

1 the stipulation that he has proposed that this material
2 is accurate, I would ask that the Court receive these,
3 frankly, as evidence, in-camera.

4 And it's -- you know, we're in a situation
5 here where, in order to avoid a charge of privilege
6 waiver, I don't know that there's another solution
7 where we could hand these over to, you know, Johnson
8 and Johnson's -- one of Johnson and Johnson's
9 opponents, adversaries, counsel for numerous plaintiffs
10 in this litigation.

11 THE COURT: Mr. Pollack?

12 MR. POLLACK: Two thoughts. One, Mr. Brody
13 keeps rewriting what my stipulation was. I stipulated
14 that, as I said from the very first time I met you,
15 Your Honor, I had no doubt that Jim Conlan had access
16 to confidential and privileged --

17 THE COURT: He just testified to that. The
18 fact that you acknowledge it, we heard that in court
19 today.

20 MR. POLLACK: Right. So I'm -- that's my
21 story, I'm sticking with it. Two, the fact is, I also
22 said that -- Mr. Conlan was quite clear each time Mr.
23 Brody questioned him; did you have access to the
24 formula for Coca-Cola, did you have access, you know,
25 to the formula to whatever?

1 His answer was, yeah but remember, my role is
2 here, it ain't this whole thing. I'm listening, I got
3 my antenna up, I'm listening to the piece the relates
4 to me but I have no doubt that, that was discussed.
5 He's very clear and what Mr. Brody keeps trying to say
6 is that the time sheets we're going to focus on. So I
7 would beg you, if you're going to do this which
8 obviously I have a problem with, that you remember that
9 Mr. Conlan has stuck with the same story three times
10 consistently.

11 Lastly, I would point out that Yuna
12 O'Builders 109 is right on point, at page 129. I'm
13 sure you've both read it but in that, they faced
14 precisely this problem. And the question was, "Yet
15 Defendant's submissions vaguely claimed only
16 information concerning pending and business-related
17 matters."

18 So let's assume we get more specific. Is
19 super-secret discussions regarding how Mr. Haas has a
20 brilliant theory for how I'm going to, you know,
21 terminate all the plaintiffs' claims. Whatever it is,
22 right? One, the crucible of cross examination fails.
23 That's what he's -- that's what Justice Rivera-Soto
24 writing for the Court was addressing.

25 Was that, you have to put up, in my language,

1 put up or shut up. You either put it out there or you
2 don't. So providing it to you in court and you are
3 both intelligent readers, doesn't really solve my
4 problem. I have to represent Beasley Allen and Andy
5 Birchfield who committed years and years to this case.

6 So I would respectfully submit, that's not
7 what the Supreme Court expects, it's not what they
8 accept and I've already given the essence of what Mr.
9 Brody really wants. Yes, I did it on the first day.
10 Jim Conlan knew -- he listened to all kinds of
11 confidential stuff, I don't doubt it at all.

12 The question is, did he share it? And when
13 it comes to that did he share it part, I'm going to be
14 very laser-focused because it has to be significantly
15 harmful. Trupos, it has to be significantly harmful.
16 So it's not enough to jump around and wave and say
17 there were confidential discussions, we were talking
18 about the formula for Coca-Cola, we have all this other
19 stuff.

20 You have to show me the goods. What exactly
21 is it that Jim Conlan learned in these discussions that
22 was disclosed? And that issue, we're not addressing.
23 So I really think we're in a side-show over here
24 regarding, did he have confidential or -- he's conceded
25 it, I've conceded it. The only one fighting,

1 apparently, is J and J.

2 THE COURT: Thank you, Mr. Pollack. Mr.
3 Brody, why don't we really -- I understand you have
4 your case. Why don't we cut to the chase and focus
5 topically. Reserve, you know, put aside the in-camera
6 issues but why don't you focus topically on what
7 exactly J and J believes that Mr. Conlan knew and that
8 ultimately, shared with Mr. Birchfield.

9 MR. BRODY: Fair enough, Your Honor. Let me
10 -- let me frame questions that way, see where we get,
11 reserving of course --

12 THE COURT: Absolutely.

13 MR. BRODY: -- the right to, you know, come
14 back to this issue of the billing records, as well as,
15 as may be relevant, I mean, there are certainly -- and
16 this is just a snapshot, an extraordinary number of
17 privileged and confidential communications that speak
18 to the scope of the work that Mr. Conlan did as outside
19 counsel for Johnson and Johnson but I will --

20 THE COURT: Why don't you paint that picture
21 for us?

22 MR. BRODY: Certainly.

23 THE COURT: Okay.

24 BY MR. BRODY:

25 Q You learned, Mr. Conlan, as outside counsel

1 for the company, how Johnson and Johnson evaluated the
2 viability of claims under different legal regimes;
3 didn't you?

4 A Could you explain what you mean, "Under different
5 legal regimes?"

6 Q Sure. You learned how J and J analyzed
7 whether the validity of claims associated with a
8 blatant tort, in terms of things like: limitations,
9 ability to accurately plead that kind of claim, might
10 differ from jurisdiction-to-jurisdiction, thereby
11 impacting the evaluation of the number of viable future
12 claims that would be associated with the particular
13 mass tort?

14 A I don't recall that. What I recall, to help
15 anyone on that question is that, J and J thought that
16 all the claims were unfounded in science and fact and
17 the only distinctions I ever heard was, there's a
18 diagnosis or there's --

19 MR. BRODY: No, I don't want you to say what
20 you heard.

21 THE WITNESS: Okay.

22 MR. BRODY: I'm -- and again, we're in a
23 situation where it's the company's privilege, the
24 company has not waived that privilege.

25 MR. POLLACK: Your Honor, objection. You

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1 can't take the part of the answer you want and not the
2 part of the answer you don't want.

3 THE COURT: I don't disagree.

4 MR. BRODY: The -- the -- he was proceeding
5 to answer a different question. The question simply
6 was --

7 THE COURT: Well, I don't necessarily know
8 that because you asked from jurisdiction-to-
9 jurisdiction, different legal regimes and I think Mr.
10 Conlan -- I'm not making any argument but what I
11 understood the testimony was, was going in a direction
12 of how those jurisdictional issues impacted his work.

13 MR. BRODY: He had gone already, Your Honor,
14 in a different direction, at that point.

15 THE COURT: Okay, right.

16 MR. BRODY: As to shifting from where my
17 limitations bar a claim, how might that differ from
18 jurisdiction-to-jurisdiction. How that might impact
19 the incidents of future claims to, you know, what was J
20 and J's view of the science and what is J and J's view
21 of the science, underlying the Talc claims, which is a
22 completely different question.

23 THE COURT: Okay.

24 MR. POLLACK: Your Honor, I respectfully
25 don't know what the witness was going to say because I

1 didn't get to hear him and Mr. Haas gave incredibly
2 long illocutions of like a page and a half answers and
3 now we're going to cut Mr. Conlan down to the three
4 lines that Mr. Brody doesn't like and he's going to cut
5 him off? I will have a standing objection on this
6 point.

7 THE COURT: Well, I'm going to make sure --
8 I'm going to ask the witness, as I did before. I
9 permitted the long answers to go because it was in
10 context. So I want to make sure that Mr. Conlan has
11 the ability -- if the question addresses an issue that
12 perhaps goes into the attorney-client privilege, Mr.
13 Brody, counsel needs to be careful. But I want to
14 permit the witness to be able to answer the questions,
15 so that we can resolve this issue.

16 MR. BRODY: Certainly, Your Honor and this
17 was a case where I think the question was focused, the
18 answer was not, which is why I needed to stop Mr.
19 Conlan and do so based on a privilege objection, so.

20 THE COURT: Okay.

21 BY MR. BRODY:

22 Q You engaged at, during the time that you were
23 representing Johnson and Johnson, Mr. Conlan, in
24 discussions concerning legal arguments -- and this is a
25 yes or no, that might be advanced on claim validity;

1 right?

2 MR. POLLACK: Objection. Mr. Conlan, if you
3 can answer it yes or no, you can answer it that way.
4 It's the Court's purview, not Mr. Brody's, to direct
5 the (indiscernible) answer.

6 THE WITNESS: No, not that I recall. May I
7 expand?

8 THE COURT: Let's hear that, Mr. Conlan.

9 THE WITNESS: Okay. I'm not a products
10 liability lawyer, I'm not a personal injury lawyer.
11 I've never brought a case, I've never defended a case.
12 It's not my area. I was a restructuring lawyer. So if
13 others were talking about that, it was lost on me. It
14 was, solely my role is, how to use proceedings to
15 capture, not just currents but futures.

16 But I will say in these all-hands meetings, a
17 significant number of the items being discussed were
18 just not in my area. And frankly, the items I would
19 discuss were not in the area of lots of other people on
20 those calls.

21 BY MR. BRODY:

22 Q So your testimony is, you were exposed to all
23 of this privileged and confidential information, you
24 just didn't understand it?

25 MR. POLLACK: Objection.

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1 THE WITNESS: Some of it, that would be true.

2 MR. BRODY: And if somebody was talking about

3 --

4 THE COURT: Overrule the objection.

5 BY MR. BRODY:

6 Q If somebody was talking about how do we
7 determine whether a certain portion of the future
8 claims that are being predicted as part of this model,
9 this settlement model, you know, how is the law in
10 different jurisdictions going to impact the validity of
11 the future claims? You just didn't understand that but
12 you were on the calls?

13 A Yeah, I certainly don't recall that.

14 MR. BRODY: All right. This is another --
15 I'll move forward, Your Honor, but I'm going to mark
16 this point, as well, because this is another area
17 where, I believe, we should be able to, without waiving
18 privilege, showing the document merely to Mr. Conlan,
19 use a privilege document to refresh his recollection as
20 to the yes or no portion of this question.

21 But I'll move forward, given the Court's
22 preference that we see where we can get to and then
23 come back to this.

24 MR. POLLACK: Your Honor --

25 THE COURT: Also, keep in mind, if the Court

1 received material in-camera, it's generally reviewed
2 and a determination is made whether it remains in-
3 camera or it should be distributed. So keep in mind,
4 Mr. Brody, that, that's also an option for it. I'm not
5 saying that will happen but that's, you know, a
6 consideration when the Court received in-camera
7 material.

8 MR. POLLACK: And if it does refresh the
9 witness' recollection, the standard practice at that
10 point, now that document is admitted into evidence.
11 You have now used a document to refresh their
12 recollection. I've never heard of a Court saying, I'm
13 going to refresh your recollection but I'm still going
14 to keep it in the super-secret box because it's now a
15 part of the record. So I think the whole argument is
16 self-defeating.

17 MR. BRODY: I don't think that's -- I don't
18 think that's an objection, frankly.

19 THE COURT: You may continue, Mr. Brody.

20 MR. BRODY: All right, thank you.

21 BY MR. BRODY:

22 Q Why don't we talk about it, since you brought
23 it up, Mr. Conlan, why don't we talk about the Imerys
24 bankruptcy, okay?

25 A Okay.

1 Q As a starting point, you would agree that the
2 ovarian cancer claims against Johnson and Johnson arise
3 out of the same nucleus of operative facts as the
4 ovarian claims against the Imerys debtors; correct?

5 A Some of them. There were claims against the
6 Imerys debtors that related to other products that were
7 not manufactured by Johnson and Johnson, like Colgate,
8 Palm Olive.

9 Q So but the answer to my question was -- and
10 my question, Mr. Conlan, was focused on the ovarian
11 cancer claims against Johnson and Johnson. And the
12 ovarian cancer claims against Johnson and Johnson arise
13 out of the same nucleus of operative facts as the
14 claims against the Imerys debtors, related to -- from
15 people who use Johnson and Johnson products; fair?

16 A With that clarification, yes.

17 Q All right and thank you, I understand the
18 distinction you were making and I'm glad we could get
19 on the same page with that one. At the time -- let's
20 see. Connection with that, sticking with Imerys, you
21 were privy to privileged and confidential analysis of
22 factors impacting the potential for a channeling
23 injunction through the Imerys bankruptcy; correct?

24 MR. POLLACK: Can I have a standing
25 objection, Judge, just because I don't want to

1 interrupt the flow.

2 THE COURT: That's fine, yep.

3 MR. POLLACK: Okay, thank you.

4 THE WITNESS: I don't know what you mean by
5 factors affecting the channeling injunction.

6 BY MR. BRODY:

7 Q You were on multiple teams, meetings, calls,
8 with the Weil Gotshal team; correct?

9 A Correct.

10 Q And the Weil Gotshal team analyzed the
11 potential for J and J to secure a channeling injunction
12 through the Imerys bankruptcy, for the Talc claims;
13 correct?

14 A May I expand, just to make sure I'm answering
15 accurately?

16 Q You may and anytime I ask you a question, if
17 you need a clarification or you have a question, just
18 let me know.

19 A Sure. During the course of the Imerys North
20 America bankruptcy, J and J, this is public, J and J
21 attempted what's called a bolt-on. Meaning, to bolt-on
22 a J and J reorganization plan to the Imerys plan, in an
23 effort to utilize the Imerys bankruptcy to resolve the
24 claims against it, importantly, not just current but
25 futures. And so in that context, Mr. Brody, yes, the

1 BY MR. BRODY:

2 Q And so he just said, hey, Jim Conlan, here's
3 my strategy for achieving this and you said, okay Jim,
4 that sounds like an okay strategy to me?

5 A Yeah, it will come down to the vote.

6 Q All right. So he said, here's my strategy
7 and you said, all right, that's -- thank you for
8 sharing your thinking with me on this. I now know your
9 strategy, Mr. Murdica?

10 A I don't think I used those words.

11 Q In sum and substance?

12 A In sum and substance, Mr. Murdica negotiated, as I
13 understood it, a matrix with the Tort Claimant's
14 Committee or some members of the Tort Claimant's
15 Committee, that they collectively thought would achieve
16 a 75 percent yes vote by current claimants and by
17 response to that was, okay.

18 Q And you talked to him about the progress of
19 those negotiations; correct?

20 A Only in the most generic terms. Like, I'm working
21 on this plaintiff's lawyer, okay. This plaintiff's
22 lawyer's votes are important, okay. But no, not at the
23 type of claim or the value of claims or that level of
24 detail, it just wasn't my area.

25 Q So you understood then which plaintiffs'

1 lawyers Mr. Murdica felt were important?

2 A Yes.

3 Q And he discussed with you his progress with
4 the plaintiffs' lawyers that he felt were important;
5 didn't he?

6 A Sometimes. I would describe it more as just name-
7 dropping, to describe how the discussions that he was
8 having were going.

9 Q You also addressed the importance of coming
10 up with a settlement matrix that was going to be
11 sufficient to and the factors that would go into that,
12 without disclosing any of them, you discussed that with
13 the Weil Gotshal teams, as well, didn't you, on these
14 meetings that you had with the J and J team?

15 A The importance of coming up with a settlement that
16 would achieve a 75 percent plus yes vote? I don't even
17 know that we would need to discuss that. In the world
18 of bankruptcy, that's just an obvious pillar.

19 Q That wasn't my question.

20 A Okay.

21 Q My question was whether it was that you also
22 had discussions with the Weil Gotshal team about how a
23 deal would have to be structured in order to try to get
24 that 75 percent participation; right?

25 A I'm sorry, I don't know what you mean by, "How it

1 would have to be structured."

2 Q Could there be, for example, you engaged in
3 discussions including -- and without revealing whether
4 anybody thought this was a good idea or a bad idea, the
5 advantages or disadvantages to Johnson and Johnson of
6 an estimation process as a part of an Imerys
7 resolution; didn't you?

8 A Not in context, if we're talking about the \$4.2
9 billion bolt-on settlement. If you're talking about
10 separate and apart from that --

11 Q Let me just ask it open-ended. Did you ever
12 have those discussions with the Weil Gotshal team?

13 A Which discussions, about estimation?

14 Q About the advantages or disadvantages to
15 Johnson and Johnson of an estimation process, as part
16 of a resolution of its talc liabilities?

17 A We did discuss what if Imerys, not with our
18 participation but, sought an estimation of the claims
19 against itself --

20 Q Okay and --

21 A -- what implication that would have for Johnson
22 and Johnson.

23 Q All right and so -- and those were privileged
24 and confidential discussions that you had with the Weil
25 Gotshal team and the in-house team at Johnson and

COURT OFFICER: All rise.

(Morning session concluded at 12:38:53 p.m.)

(Continuation of day's proceeding on afternoon session)

* * * *

CERTIFICATION

I, Nitsa Carrozza, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, timestamp from 09:37:00 a.m. to 12:38:53 p.m., is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings, as recorded.

/s/ Nitsa Carrozza

Nitsa Carrozza

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Date

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1 evaluation of what is the right answer going forward
2 and what has to happen here.

3 MR. POLLACK: May I respond, Your Honor?

4 THE COURT: Sure but let's keep in mind, this
5 Court, you know, we live in the world, these courts,
6 live in the real world. We understand what is going on
7 and we can focus on what is at issue here and I can
8 assure you, whatever is out there, is not going to
9 infect this Court's decision with regard to the
10 underlying issue of disqualification.

11 MR. POLLACK: I understand, Your Honor and
12 I'm not arguing with you, I'm not quivering at all.
13 The only point I would make on that is that, what you
14 say and how you say it is going to have ramifications
15 and reverberations down the road, right? Because the
16 fact is, this transcript, these hearings, these
17 discussions, I promise you, Mr. Birchfield and his firm
18 will be seeing it for years and Mr. Haas and Mr. Brody
19 or someone else will be using it as a lever for years
20 to come. So how we articulate it is going to be
21 important.

22 I would like to step back for one second.
23 When we first talked years ago, it was literally last
24 year. We were talking about Trupos, we were talking
25 about UNA Builders, et cetera and when I spent, I don't

1 know, 20 years, 15 years, on the Ethics Committee,
2 another ten on the Character and Fitness Committee.

3 When someone is being attacked or someone is
4 being accused of an ethical violation, it usually is
5 referred to the Ethics Committee. That's what those
6 people do, that's what I did for years. And typically,
7 the person who is being accused or being challenged or
8 being -- or is being attacked, is told exactly what it
9 is they allege to have done.

10 They're told with precision, this is the
11 client fund you should not have taken, this was the
12 alcoholism and drugs which unfortunately is about half
13 the matters we deal with. It was a specific allegation
14 of negligence and miscarriage or something along those
15 lines.

16 In this case, it has been a constant
17 morphing. Mr. Brody's first oral argument before you,
18 Judge Porto, was there is no ethical violation, no
19 R.P.C. on point we can find, none. Judge Singh, you
20 asked the question pointedly; do I need to find an
21 R.P.C. violation to disqualify? The answer from Mr.
22 Brody, no.

23 He and I disagree vehemently on this point
24 and by the way, I think the Supreme Court of New Jersey
25 is squarely in my corner on this one. Once you got rid

1 of the appearance of impropriety, which they did in
2 1984 under the following condition --

3 THE COURT: '93?

4 MR. POLLACK: I'm sorry, '93, I apologize.
5 Once they came out with that one, at that point, the
6 reality is that, we shouldn't be here. Because I
7 understand you want to do a credibility determination.
8 If that's what we're focused on, then the credibility
9 can be determined by, is Andy an honest guy, was Andy's
10 firm committed to his clients, you know, why are they
11 opposing the bankruptcy if you want to.

12 You can get into all those issues but what
13 Mr. Brody is now saying is; let's just try all the
14 issues right here. I'm ready to do it. If that's what
15 we want to do, I'm ready to do it and we will proceed
16 but I just think that, the reason the Supreme Court
17 said you should decide it on the papers, unless -- and
18 you grabbed onto this, Judge Porto. I'm not
19 criticizing you but you appropriately said; hey, I have
20 some issues, I want to look at credibility. It's not
21 supposed to be a free-for-all.

22 Now I'm looking at RPC 1.6, sharing of
23 confidential information. Somehow, I'm now looking at
24 1.9, 1.10. I have other rules that I haven't even
25 looked at yet that Mr. Brody is now articulating. I've

Date